

No. 14879

United States
Court of Appeals
For the Ninth Circuit.

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, as Executor for
the Last Will and Testament of Thomas Mc-
Donough, Deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

JAN - 3 1956

Phillips & Ven Orden Co., 870 Brannan Street, San Francisco, Calif.-12-9-55

PAUL P. GIBLIN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Defendant and Appellee.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 32762

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, a National Bank-
ing Corporation, as Executor of the Last Will
and Testament of THOMAS McDONOUGH,
Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT TO RECOVER FEDERAL
ESTATE TAXES

Comes now plaintiff above named and complains
of defendant above named and as and for a cause
of action against said defendant alleges as follows:

1. This civil action arises under Acts of Congress
providing for internal revenue, to wit: Internal
Revenue Code Act of February 10, 1939, C. 2, 53
Stat. 1 as amended, Sections 800 to 937 (Sections
800 to 937, Chap. 3, Estate Tax of Subtitle A, Title
26 U.S.C.A.) and I.R.C. 3772. Jurisdiction herein
is conferred by Section 1346 of Title 28, U.S.C.A.

2. At all times herein mentioned plaintiff, Bank
of America National Trust and Savings Association,
was and now is a national banking corporation or-

ganized under the laws and statutes of the United States, to wit, under Chapter 2 of Title 12, U.S.C.A.

3. Thomas McDonough died in San Francisco, California, on September 13, 1948, leaving a last Will and Testament wherein plaintiff was named executor thereof. On October 15, 1948, plaintiff was duly appointed executor of said Last Will and Testament by order of the Superior Court of the State of California in and for the City and County of San Francisco, qualified as such, and ever since has been and now is the duly appointed, qualified and acting executor of said Last Will and Testament, and brings this action in its said representative capacity.

4. On November 21, 1949, plaintiff executed and filed with the Collector of Internal Revenue, First District of California, at San Francisco, California, Form 706 Treasury Department, United States Estate Tax Return for the estate of said decedent and at that time paid to said Collector of Internal Revenue James G. Smyth the sum of \$160,651.22, being the full amount of tax shown in said return.

5. On October 29, 1951, the Commissioner of Internal Revenue, acting by and through the Acting Internal Revenue Agent in Charge, mailed to plaintiff his determination of estate tax liability in said estate determining a gross deficiency in Federal Estate Tax in the sum of \$26,173.64 and a net deficiency of \$8,516.75 after credit for California Inheritance Taxes paid by plaintiff. On January 5, 1952, plaintiff paid to the then Acting Collector of

Internal Revenue at San Francisco, California, Charles F. Masarik, Jr., said sum of \$8,516.75 plus interest thereon amounting to the sum of \$1,054.20.

6. Neither said James G. Smythe nor said Charles F. Masarik, Jr., is now in office as Collector or Director of Internal Revenue at San Francisco, California.

7. On April 21, 1952, plaintiff filed with the Collector of Internal Revenue at San Francisco, California, on Form 843 its claim for refund of the Federal Estate Taxes paid as aforesaid in the sum of \$57,191.48, a true and correct copy whereof is attached hereto, made a part hereof, and marked "Exhibit A." On March 3, 1953, plaintiff was advised by the Director of Internal Revenue at San Francisco, California, that no grounds for reduction in tax liability in the above estate had been disclosed by said claim for refund.

8. Peter P. McDonough died in San Francisco, California, on July 8, 1947. At the time of his death he and said Thomas McDonough held and owned certain property as joint tenants with the right of survivorship and upon the death of said Peter P. McDonough said property passed by operation of the laws of the State of California to Thomas McDonough, who thereupon became the sole owner thereof; and such jointly-owned property at no time formed any part of the estate of said Peter P. McDonough under the laws of the State of California or any other laws. By virtue of I.R.C. 811 the gross estate of said Peter P. McDonough subject to Fed-

eral Estate Tax included one-half of the said property so held in joint tenancy and plaintiff, as administrator of said Estate of Peter P. McDonough, filed the Federal Estate Tax Return (Form 706) of said estate and included therein in "Schedule E" a detailed itemized list of such jointly-owned property and included as a part of the gross estate subject to Federal Estate Tax one-half of the value thereof amounting to the sum of \$607,014.10. Upon final audit dated May 25, 1951, by the Commissioner of Internal Revenue acting by and through his duly authorized agents, the value of the one-half interest in said jointly-owned property was finally determined at the sum of \$577,971.92, and plaintiff, as administrator of the Estate of Peter P. McDonough, acquiesced in and accepted such valuation.

9. According to said final audit in the Estate of Peter P. McDonough the net estate subject to Federal Estate Tax other than said jointly-owned property belonging to said Thomas McDonough amounted to only the sum of \$33,608.21 and said sum was utterly inadequate to pay the total Federal Estate Tax in said estate which was finally determined at the sum of \$149,289.84. The said Federal Estate Tax upon the Estate of Peter P. McDonough became a lien upon the undivided one-half interest of Peter P. McDonough in said jointly-owned property at the time of his death. On September 13, 1948, the said Thomas McDonough died leaving intact and without diminution all of the said jointly-

owned property which had become solely vested in him upon the death of said Peter P. McDonough and leaving unpaid his obligation to pay to the administrator of the Estate of Peter P. McDonough his share of said Federal Estate Tax, which said obligation was imposed upon him by Section 975 of the Probate Code of California. It, therefore, became necessary for plaintiff, as executor of the Estate of Thomas McDonough, Deceased, to pay the amount of the Federal Estate Tax due in the Estate of Peter P. McDonough upon said jointly-owned property, and plaintiff did pay on October 8, 1948, to said Collector out of the assets of said Estate of Thomas McDonough other than the said jointly-owned property, the sum of \$141,686.05 for and on account of the obligation so owed to the administrator of said Estate of Peter P. McDonough. Subsequently and upon said final audit by the Commissioner of Internal Revenue under date of October 29, 1951, of the Estate of Thomas McDonough it was finally determined that the amount of such Federal Estate Tax in the Estate of Peter P. McDonough for and on account of said property which became solely vested in Thomas McDonough upon the death of said Peter P. McDonough was \$141,592.71.

10. By the final audit of the Commissioner of Internal Revenue in the Estate of Thomas McDonough dated October 29, 1951, said Commissioner finally determined that the value of the property of Peter P. McDonough upon which the Federal Estate Tax in the latter's estate had been paid and

which was included and identified in the gross estate of said Thomas McDonough at the date of his death as having been received by him from said Peter P. McDonough was the sum of \$585,719.23, and plaintiff acquiesced and does now acquiesce in such determination.

11. Section 811 of the Internal Revenue Code required that there be included in the gross estate of Thomas McDonough all of his property, including the undivided one-half interest amounting to \$585,719.23 of jointly-owned property received by said Thomas McDonough upon the death of Peter P. McDonough. In the return Form 706 filed by plaintiff with the Collector as stated in paragraph 4 above, plaintiff set forth in Schedule A (Real Estate), Schedule B (Stocks and Bonds) and Schedule C (Mortgages, Notes and Cash) only one-half of the total values of the property formerly owned by Thomas McDonough and Peter P. McDonough and set forth the other one-half in Schedule I (Property Previously Taxed). Believing that it was so required to do, plaintiff erroneously deducted from the valuation of \$585,719.23 hereinabove mentioned as the final amount of such previously taxed property the amount of the Federal Estate Tax which it was obligated to pay to the administrator of the Estate of Peter P. McDonough, which, as stated above, was finally determined at \$141,686.05; that said amount of \$141,686.05 constituted a debt and liability of the Estate of Thomas McDonough and an indebtedness in respect to his said property un-

der Section 812, I.R.C., and should have been deducted from the gross estate; that with said addition the gross estate under I.R.C. 811 of said Thomas McDonough amounted to \$1,215,806.25 instead of \$1,074,213.54 as shown in the final determination of October 29, 1951; that in preparing the claim for refund "Exhibit A" plaintiff erroneously used said figure of \$1,074,213.54 in its computations instead of said \$1,215,806.25 and by reason thereof the computations used in said "Exhibit A" must be changed in accordance therewith.

12. By virtue of Section 812 (c) of the Internal Revenue Code (Title 26, U.S.C.A., Par. 812 (c)) it is provided that the value of the net estate of Thomas McDonough subject to Federal Estate Tax shall be determined by deducting from the value of his gross estate an amount equal to the value of any property forming a part of the gross estate for Federal Estate Tax purposes of Peter P. McDonough to the extent of the value of such property identified as having been received by Thomas McDonough from said Peter P. McDonough and included in the gross estate of said Thomas McDonough, which said amount as hereinbefore related amounted to the sum of \$585,719.23; that the only reduction of said \$585,719.23 provided by said Section 812 (c) applicable thereto is a reduction by an amount which bears the same ratio to deductions from the gross estate of Thomas McDonough allowed by Subsections (a), (b), and (d) of said Section 812, to wit:

(a) an exemption of \$100,000.00;

(b)

(1) for funeral expenses;

(2) for administration expenses;

(3) for claims against the estate; and

(4) for unpaid indebtedness in respect to property where decedent's interest therein is included undiminished in his gross estate; and

(d) charitable bequests;

as said \$585,719.23 bears to all the property of said Thomas McDonough subject to general claims; that the respective amounts of said deductions are as follows:

(a) An exemption of	\$100,000.00
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(b)

(1) Funeral expenses	1,652.83
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(2) Administration expenses:

Attorneys' fees	\$ 58,317.68
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Executor's commissions	33,317.68
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Caretaker's expense	2,307.59
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Appraisal fees	844.27
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Insurance	133.43
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Miscellaneous	713.74
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Sub-Total	\$ 95,634.39
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Less claimed on estate 1949 In

come Tax Return	54,613.13	41,021.26
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(3) Claims against the estate includ-

ing \$141,592.71 due Adminis-

trator of Estate of Peter P.

McDonough	160,954.28
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(d) Charitable bequests	5,000.00
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Total	\$308,628.37
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that the total of all the property of said Thomas McDonough subject to general claims was and is the sum of \$1,215,806.25; that the ratio by which the said reduction is to be determined is
$$\frac{585,719.23}{1,215,806.25}$$

which is to be applied against said deductions of \$308,628.37, resulting in a reduction from said \$585,719.23 of \$148,682.64 for the basic tax; that the foregoing deductions applicable to the additional tax amount to \$268,628.37 using an exemption of \$60,000.00 instead of \$100,000.00 and the corresponding reduction of said \$585,719.23 amounts to \$129,412.52.

13. A Federal Estate Tax was paid to the United States upon property in the Estate of Peter P. McDonough determined as aforesaid at the amount of \$585,719.23 and not upon any lesser amount, and since Thomas McDonough died within five years of the death of said Peter P. McDonough, the said sum of \$585,719.23 may not be taxed again in the Estate of Thomas McDonough under the Internal Revenue Code nor under any other law; that pursuant to said Section 812 the only reduction of said sum permitted is the sum of \$148,682.64 for the basic tax and the sum of \$129,412.52 for the additional tax leaving a net deduction for property previously taxed of \$437,036.59 for the basic tax and \$456,306.71 for the additional tax; that all regulations of the Commissioner of Internal Revenue contrary to the above are null and void and violate the terms of the Internal Revenue Code and specifically Section 812 thereof; that attached hereto

and marked "Exhibit B" is a schedule showing the computations of the basic and additional estate taxes in said estate.

14. By reason of the action of said Commissioner in reducing said above sums of \$437,036.59 and \$456,306.71 constituting the value of the property previously taxed in the Estate of Peter P. McDonough, said Commissioner has unlawfully and illegally increased the Federal Estate Tax in the Estate of Thomas McDonough by the sum of \$40,249.05 as shown in "Exhibit B" attached hereto, and plaintiff is entitled to recover said sum paid by it as aforesaid together with interest thereon.

Wherefore, plaintiff prays that judgment be rendered in its favor for the said sum of \$40,249.05 with interest thereon at six per centum per annum from time of payment.

/s/ J. W. RADIL,

/s/ F. J. KILMARTIN,

KNIGHT, BOLAND &
RIORDAN,

Attorneys for Plaintiff.

EXHIBIT A

Treasury Department Form 843.

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the
kind of claim filed, and fill in the certificate on
the reverse side.

- ☒ Refund of Tax Illegally Collected.
- ☐ Refund of Amount Paid for Stamps Un-
used, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable
to estate or income taxes).

State of California,
City and County of San Francisco—ss.

Collector's Stamp (Date received): [Blank].

Name of taxpayer or purchaser of stamps: Estate of
Thomas McDonough, Bank of America, Execu-
tor.

Business address: 300 Montgomery St., San Fran-
cisco 20, California.

Residence

The deponent, being duly sworn according to law,
deposes and says that this statement is made on
behalf of the taxpayer named, and that the facts
given below are true and complete:

1. District in which return (if any) was filed:
1st California.

3. Character of assessment or tax: Federal Estate Tax.

4. Amount of assessment, \$170,222.17; dates of payment, Nov. 21, 1947, and Jan. 5, 1952.

* * *

6. Amount to be refunded: \$57,191.48.

* * *

8. The time within which this claim may be legally filed expires, under Section 910 Tit. 26, USCA, on Nov. 20, 1952, and Jan. 4, 1955.

The deponent verily believes that this claim should be allowed for the following reasons:

See statement attached.

The above executor filed the return and is still acting as such.

Bank of America N.T. & S.A., as Executor of the Last Will and Testament of Thomas McDonough, Deceased.

By J. A. CURTIS,

Assistant Trust Officer.

Sworn to and subscribed before me this 15th day of April, 1952.

[Seal] /s/ EDMUND LEE KELLY,
Notary Public.

My Commission Expires Jan. 23, 1956.

In this statement the letters PPT mean "property previously taxed."

The purpose of Sec. 812 (c) TiT. 26 USCA is to prevent the transfer of the same property from being taxed twice within five years.

The value of the property in joint tenancy of Peter F. McDonough and Thomas McDonough upon which a Federal Estate Tax was paid in the Estate of Peter F. McDonough (who died July 8, 1947) and which was specifically identified in Estate of Thomas McDonough (who died Sept. 13, 1948) per Form 706 in Estate of Thomas McDonough and per audit and determination of Oct. 29, 1951 (IT:EG:23853 First Calif.) was \$ 585,719.23

The law (Sec. 812 (c) TiT. 26 USCA) does not provide that this previously taxed property shall be reduced by the amount of the Federal Estate taxes assessed and paid in the proceedings in the Estate of Peter F. McDonough upon this \$585,719.23 which amounted to \$141,592.71. Nor does the law provide that to determine the value of this previously taxed property mathematical gymnastics shall be applied to the actual physical property so identified so as to reduce it to a "theoretical balance", thus frittering away and destroying the deduction provided by Congress. Hence there is no legal basis for reducing this \$585,719.23 actually on hand in the Estate of Thomas McDonough and so identified to \$373,894.73. All regulations of the Commissioner contrary to the above are in excess of his authority and void. The only reduction in the value of the PPT permitted by Sec. 812 (c) is one due to the fact that this PPT in the present estate (Thomas McDonough) is subject to its proportion of the specific exemption, funeral expenses, administration expenses and claims in the present estate which in the case of the basic tax amount to \$167,035.66, namely:

	<u>585,719.23</u>	X 167,035.66	equals	\$ 91,076.86
leaving a net deduction for PPT for basic tax of	<u>1,074,213.54</u>			\$ 494,642.37

	<u>585,719.23</u>	X 127,035.66	equals	\$ 69,266.70
leaving a net deduction for PPT for additional tax of	<u>1,074,213.54</u>			\$ 516,452.53

COMPUTATION OF NET ESTATE FOR BASIC TAX

Gross Estate		\$1,074,213.54
Total of funeral and administration expense, debts, and charitable bequests per audit	\$ 67,035.66	
Specific exemption	100,000.00	
Deduction for PPT as above	<u>494,642.37</u>	
Total deductions		<u>661,673.03</u>
Net Estate for basic tax		<u><u>\$ 412,535.51</u></u>

Computation of Net Estate for Additional Tax

Gross Estate	\$ 1,074,213.54
Total of funeral and administration expense, debts, and charitable be- quests per audit	\$ 67,035.66
Specific exemption	60,000.00
Deduction for PPT as above	516,452.53
<hr/>	
Total deductions	643,488.19
<hr/>	
Net Estate for additional tax	\$ 430,725.35
<hr/>	
Gross basic tax on \$412,535.51	\$ 13,126.78
Credit for California Inheritance Tax (30%)	10,501.42
<hr/>	
Gross basic tax less credit for Inheri- tance Tax	\$ 2,625.36
<hr/>	
Total gross taxes on \$430,725.35	\$123,532.11
Gross basic tax	13,126.78
<hr/>	
Gross additional tax	\$110,405.33
Net basic tax	2,625.36
<hr/>	
Total tax payable	\$113,030.69
<hr/>	
Amount paid with return on Nov. 21, 1949	\$160,651.22
Amount of deficiency per audit Oct. 29, 1951 paid on Jan. 5, 1952	8,516.75
Interest on deficiency paid on Jan. 5, 1952	1,054.20
<hr/>	
	\$170,222.17
Less total tax payable as above	113,030.69
<hr/>	
Amount to be refunded	\$ 57,191.48
<hr/>	

EXHIBIT B

Computation of Basic and Additional Estate Taxes

Basic Tax

Gross Estate		\$ 1,215,806.25
Less: Exemption of \$100,000.00 funeral expenses, administration expenses and claims, including indebtedness due to Estate of Peter P. McDonough and chari- table bequests per paragraph 12 supra	\$308,628.37	
Property previously taxed	437,036.59	745,664.96
Net estate subject to basic tax		<u>\$ 470,141.29</u>
Gross basic tax on \$470,141.29	\$ 16,007.06	
Less credit for California Inheri- tance Tax (80%)	12,805.65	
Net basic tax	\$ 3,201.41	

Additional Tax

Gross Estate		\$ 1,215,806.25
Less: Exemption of \$60,000.00 funeral expenses, administration expenses and claims, including indebtedness due to Estate of Peter P. McDonough and chari- table bequests per paragraph 12 supra	\$268,628.37	
Property previously taxed	456,306.71	724,935.03
Net estate subject to additional tax		<u>\$ 490,871.17</u>
Tentative tax	\$142,778.77	
Less gross basic tax	16,007.06	
Net additional tax		\$ 126,771.71
Add net basic tax (supra)		<u>3,201.41</u>
Total Federal Estate Tax		<u>\$ 129,973.12</u>

Total Federal Estate Tax actually	
paid	\$169,167.97
Interest paid on alleged deficiency of	
\$8,516.75	1,054.20
	<hr/>
Total amount paid	\$170,222.17
Less Federal Estate Tax computed	
above	129,973.12
	<hr/>
Amount of refund due	\$ 40,249.05

Duly verified.

[Endorsed]: Filed May 8, 1953.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant by its attorney, Lloyd H. Burke, United States Attorney in and for the Northern District of California, and for its answer to the complaint filed in the above-entitled action alleges as follows:

1. The defendant admits the allegations of paragraph 1 of the complaint.
2. The defendant admits the allegations of paragraph 2 of the complaint.
3. The defendant admits the allegations of paragraph 3 of the complaint.
4. The defendant admits the allegations of paragraph 4 of the complaint.
5. The defendant admits the allegations of paragraph 5 of the complaint, except that it denies that

payment to the then Acting Collector of Internal Revenue at San Francisco, California, was made on January 5, 1952. The defendant alleges said payment was made on January 3, 1952.

6. The defendant admits the allegations of paragraph 6 of the complaint.

7. The defendant admits that on April 21, 1952, plaintiff filed with the then Collector of Internal Revenue at San Francisco, California, a claim for refund (Form 843) of Federal Estate Taxes in the sum of \$57,191.48, and that "Exhibit A" attached to the complaint is a full, true and correct copy of that claim as filed. The defendant further admits that plaintiff was, on March 3, 1953, advised by the Director of Internal Revenue at San Francisco, California, that no grounds for the reduction of tax liability were disclosed by said claim for refund. The defendant denies the truth or correctness of the allegations contained in said "Exhibit A."

8. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 8 of the complaint.

9. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 9 of the complaint.

10. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 10 of the complaint.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 11 of the complaint.

12. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 12 of the complaint.

13. The defendant is without knowledge or information sufficient to form a belief as to the truth or correctness of the allegations contained in paragraph 13 of the complaint.

14. The defendant denies the allegations contained in paragraph 14 of the complaint.

Wherefore, it is prayed that judgment be entered in favor of the defendant, and that it be granted its costs and all other just and proper relief.

/s/ LLOYD H. BURKE,

United States Attorney.

[Endorsed]: Filed September 10, 1953.

[Title of District Court and Cause.]

PRE-TRIAL ORDER

Pursuant to the order for pre-trial proceedings made and entered herein on November 1, 1954, a pre-trial conference was held before the Honorable Oliver J. Carter on November 10, 1954. There appeared at the conference J. W. Radil, Esq., of Messrs. Knight, Boland & Riordan, attorneys for plaintiff, and Lloyd H. Burke, Esq., United States

Attorney, by George A. Blackstone, Esq., Assistant United States Attorney, attorneys for defendant. Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the consent of the aforesaid counsel, It Is Hereby Ordered:

1. The correct date of payment by plaintiff of the deficiency in tax in the Estate of Thomas McDonough as related in paragraph 5 of the Complaint on file herein is January 3, 1952.

2. The allegations of paragraph 8 of the Complaint on file herein are true and correct.

3. Attached hereto and numbered for identification are the following documents:

Ex. 1. Certain pages of the Estate Tax Return, Form 706, in the Estate of Peter F. McDonough filed with the then Collector of Internal Revenue at San Francisco, California.

Ex. 2. Final audit dated May 25, 1951, made by the Commissioner of Internal Revenue of the said return, Ex. 1.

Ex. 3. Certain pages of the Estate Tax Return, Form 706, in the Estate of Thomas McDonough filed with the then Collector of Internal Revenue at San Francisco, California.

Ex. 4. Final audit dated October 29, 1951, made by the Commissioner of Internal Revenue of the said return, Ex. 2.

All of the four aforesaid documents are true and correct copies of the original documents and said copies are hereby admitted into evidence without

further authentication at the trial of this cause. All of the figures stated in said documents are correct with the exception that the parties to not agree upon the method used in marshalling and computing the gross and net estate of Thomas McDonough and the amount of the deductions to be allowed from said gross estate in respect to the property previously taxed in the Estate of Peter F. McDonough under section 812 (c), I.R.C., nor do they agree upon the amount of the tax liability in said Estate of Thomas McDonough.

4. Referring to the allegations in paragraph 9 of the Complaint on file herein, the following facts are admitted:

(a) The gross estate of Peter F. McDonough as shown on Ex. 2 was \$638,673.66.

(b) The jointly-owned property of Peter F. McDonough and Thomas McDonough as shown on the final audit in the Estate of Peter F. McDonough, Ex. 2, was \$577,971.92.

(c) The allowable amount of deductions from the gross estate of Peter F. McDonough as shown on the said final audit in said Ex. 2 was \$27,093.53.

(d) The total Federal Estate Tax determined in the Estate of Peter F. McDonough as shown upon said final audit, Ex. 2, was \$149,289.84.

(e) Bank of America, as Executor of the Estate of Thomas McDonough, paid to the Collector of Internal Revenue at San Francisco, California,

on October 8, 1948, \$141,686.05 for and on account of the Federal Estate Taxes in the Estate of Peter F. McDonough attributable to said jointly-owned property.

(f) By the final audit in the Estate of Thomas F. McDonough, Ex. 4, dated October 29, 1951, it was finally determined that the amount of Federal Estate Tax in the Estate of Peter F. McDonough attributable to said jointly-owned property was the sum of \$141,592.71.

5. Referring to the allegations of paragraph 10 of said Complaint, the gross value of the property jointly owned by Peter F. McDonough and Thomas McDonough included and identified in the Estate of Thomas McDonough at the date of his death as having been received by him from the said Peter F. McDonough without taking account of the proportionate amount of the Federal Estate Tax in the Estate of Peter F. McDonough attributable to said jointly-owned property was the sum of \$585,-719.23.

6. In the event plaintiff should prevail in this action, the exact amount of the judgment is to be computed by mutual agreement, or in the absence of such agreement, by the Court on the basis of the evidence then and there to be submitted.

Dated: November 10, 1954.

/s/ OLIVER J. CARTER,

Judge of the United States
District Court.

UNITED STATES

ESTATE TAX RETURN

(To be executed and filed in duplicate)

Exemptions of nonresidents not citizens of the United States may generally be on Form 706-A instead of this form. For details see back of sheet XX.

PETER P. MC DONOUGH

Decedent's name July 8, 1947

Date of death 2090 Broadway, Apt. 706, San Francisco

Residence (domicile) at time of death United States of America

Citizenship (nationality) at time of death

(Space for use of collector)

RECEIVED

Tax of \$141,626.05

pd on 10/8/48

directly by Bank to

Collector of Internal Revenue

for City of San Francisco

GENERAL INSTRUCTIONS

STATUTE AND GENERAL DESCRIPTION

The Federal estate tax is neither a property nor an inheritance tax. It is imposed upon the transfer of the entire net estate and not upon any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing on the question of liability or the extent thereof.

Federal estate taxation (chapter 3 of the Internal Revenue Code) consists of the basic estate tax (subchapter A) and the additional estate tax (subchapter B).

In the case of a citizen or resident of the United States, a specific exemption of \$100,000 is authorized for the purpose of the basic estate tax, and a specific exemption of \$50,000 is authorized for the purpose of the additional estate tax.

A credit is authorized against the basic estate tax (not in excess of 80 percent thereof) for estate, inheritance, legacy, or succession taxes paid a State, Territory, the District of Columbia, or any possession of the United States. No such credit is allowable against the additional estate tax.

Credits for Federal gift taxes are, under certain conditions, allowable against both the basic and the additional estate taxes.

In the case of a citizen or resident of the United States, credit is authorized by treaties, under certain conditions, for Dominion succession duties imposed in Canada, estate duty imposed in Great Britain, and estate duty imposed in Northern Ireland. (See "Credits under Death Duty Conventions" on the back of sheet 11.)

Different provisions control the determination of the tax liability of the estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States. (References herein to the deceased person's residence mean the deceased person's domicile.) For specific information on Federal estate taxation in the case of a nonresident not a citizen of the United States, see the "Additional Instructions for Estates of Nonresidents not Citizens of the United States" on the back of sheet XX.

ESTATES FOR WHICH RETURN REQUIRED

A return on this form must be filed for the estate of every citizen or resident of the United States whose gross estate as defined by the statute exceeded \$60,000 in value at the date of death. (See "Estates of Persons Dying before October 22, 1942" on the back of sheet 11 for information on the requirement of a return in the case of a resident or citizen dying prior to that date.)

The value of the gross estate at the date of the decedent's death governs the liability for the filing of the return, regardless of any valuation as of a subsequent time that may be adopted by the executor under the provisions of section 811(c) of the Internal Revenue Code.

TIME AND PLACE FOR FILING RETURN

The return is due 15 months after the date of the decedent's death. The return for the estate of a resident decedent must be filed with the collector in whose district the decedent had his domicile at the time of death. The return for the estate of a nonresident citizen must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district or if no part of the gross estate was situated in the United States, it must be filed with the Collector for the Second District of New York or with such collector as the Commissioner may designate.

PAYMENT OF TAX

The tax is due 15 months after the date of the decedent's death, and must be paid within such period unless an extension of time for payment thereof has been granted by the Commissioner. Check or money order in payment of the tax should be made payable to "Collector of Internal Revenue at _____ naming city and State in which is located the office of the collector with whom the return is filed."

GROSS ESTATE

In addition to the general provision of the statute requiring the inclusion in the gross estate of property to the extent of the decedent's interest therein, other provisions specifically include, as more fully explained hereinafter in the instructions for the separate schedules, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, community property, life insurance even though payable to beneficiaries other than the estate, property over which the decedent possessed a power of appointment, and dower or curtesy (or statutory estate in lieu thereof) of the surviving spouse.

SUPPLEMENTAL DOCUMENTS

If the decedent was a resident and died testate, two copies of the will, one of them certified, must be filed.

If the decedent was a nonresident citizen, the following documents must be filed with the return:

(1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court.

(2) A copy of the return filed under the foreign inheritance, estate, legacy, succession tax, or other death duty act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

(3) If the decedent died testate, a certified copy of the will.

Other supplemental documents may be required as hereinafter explained under the instructions for the several schedules.

EXECUTION OF RETURN

This form consists of the cover sheets and 20 inside sheets numbered in consecutive order. A complete set should be used for every copy of the return required. For convenience in typing carbon copies, the sets as issued may be readily separated and the corresponding sheets matched. When completed, each copy of the return to be filed must be permanently fastened together with all sheets in proper order. Any suitable type of paper fastener may be used for this purpose. Ordinary wire staples are recommended for the return of average size. The return must be filed in duplicate. A separate printed, numbered 1 to XXII, must be included.

Write only on one side of each sheet of paper. If there is not sufficient space for all entries under any of the printed schedules, use additional sheets of the same size, and insert in the proper order in the return. All information required, as indicated under "General Information," must be supplied in the spaces provided. The

Schedule E

Jointly Owned Property

(1) Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? Yes.

(2) If so, state the name and address of each surviving cotenant. Mr. Thomas McDonaugh, 1436-23rd Avenue, San Francisco, California.

Value at date of
death

Total (also enter under the Recapitulation,
Schedule O)\$607,014.10

Estate of Peter P. McDonough

Schedule E—Sheet VIII

SECURITIES HELD BY PETER P. McDONOUGH
AND THOMAS McDONOUGH AS JOINT TENANTS

<u>STOCKS</u>			Value as of <u>July 8, 1947</u>
<u>No. Shares</u>	<u>Security</u>		
1. 300	American Telephone and Telegraph Company Capital stock	\$ 31,875.00	
2. 7,500	Bank of America N. T. & S. A. Common stock	334,687.50	
3. 220	Barnedall Oil Company Common stock	6,256.25	600
4. 100	Consolidated Natural Gas Company Capital stock	4,768.75	500
5. 1,000	General Motors Corporation Common stock	60,125.00	✓
6. 1,000	General Public Utilities Corporation Common stock	14,562.50	✓
7. 5	Mission Corporation Common stock	194.37	500
8. 125	Middle States Petroleum Corporation Trust Certificate for Class "B" stock	609.37	500
9. 350	North American Oil Consolidated Capital stock	7,375.00	✓
10. 1,100	Pacific Gas and Electric Company Common stock	44,550.00	605
11. 1,000	Pacific Public Service Company Common stock	15,125.00	✓
12. 1,000	Pacific Public Service Company Common (Non- Voting) stock	15,125.00	
13. 300	Pacific Telephone and Telegraph Company Common stock	20,350.00	✓
14. 100	South Carolina Electric & Gas Company Common stock	700.00	✓
15. 1,000	Standard Oil Company of New Jersey Capital stock	77,187.50	✓
16. 2,500	Standard Oil Company of California Capital stock	153,750.00	✓
17. 384	Texas Public Service Company Common stock	8,256.00	✓
18. 20,000	Transamerica Corporation Capital stock	247,500.00	✓
19. 3,000	Union Oil Company of California Capital stock	67,500.00	✓
<u>BONDS</u>			
20. \$ 8,000	International Hydro-Electric System Convertible 6% Gold Debentures, dated April 1, 1929 due April 1, 1944	8,050.00	✓
21. 20,000	United States of America 2½% Treasury Bonds, dated September 15, 1943 due December 15, 1969/64	20,700.00	
22. 10,000	United States of America 2½% Treasury Bonds, dated February 1, 1944 due March 15, 1970/65	10,278.12	
23. 20,000	United States of America 2½% Treasury Bonds, dated November 15, 1945 due December 15, 1972/67	20,556.25	67,284
24. 10,000	The United States of America 2½% Treasury Bond dated October 20, 1941 due September 15, 1972/67	10,565.62	
25. 5,000	The United States of America 2½% Treasury Bond, dated December 1, 1944 due March 15, 1971/66	5,184.37	

REAL PROPERTY HELD BY PETER P. McDONOUGH
AND THOMAS McDONOUGH AS JOINT TENANTS

Improved Real Property located in the City and County of San Francisco, State of California, designated as follows:

26. PARCEL ONE:

1436 - 23rd Avenue, San Francisco, Lot No. 38, Assessor's Block 1831, Legal description as follows:

BEGINNING at a point on the easterly line of Twenty-third Avenue, distant thereon 200 feet southerly from the southerly line of Judah Street; running thence southerly along said line of Twenty-third Avenue 50 feet; thence at a right angle easterly 96 feet, more or less, to a line drawn southerly from a point on the southerly line of Judah Street, distant thereon 113 feet and 5 inches easterly from the easterly line of Twenty-third Avenue, to a point on the northerly line of Kirkham Street, distant thereon 70 feet and 6 inches easterly from the easterly line of Twenty-third Avenue; thence northeasterly along the line so drawn 50 feet, more or less, to a line drawn easterly from the point of beginning, at a right angle to the easterly line of Twenty-third Avenue; thence westerly along said last line so drawn 99 feet, more or less, to the point of beginning.

Being portion of OUTSIDE LAND BLOCK NO. 747.

\$15,000.00

27. PARCEL TWO:

1415-17th Avenue, San Francisco, Lot No. 4, Assessor's Block No. 1527, Legal description as follows:

BEGINNING at a point on the westerly line of Seventeenth Avenue, distant thereon 75 feet southerly from the point formed by the intersection of the westerly line of Seventeenth Avenue with the southerly line of Geary Boulevard; and running thence southerly along said line of Seventeenth Avenue 25 feet; thence at a right angle westerly 82 feet and 6 inches; thence at a right angle northerly 25 feet; and thence at a right angle easterly 82 feet and 6 inches to the point of beginning.

Being part of OUTSIDE LAND BLOCK NO. 267.

11,500.00

28. PARCEL THREE:

Unimproved real property located in Contra Costa County, State of California, Legal description as follows:

All that certain real property situated in the City of Richmond, County of Contra Costa, State of California, described as follows:

Lots 19, 20 and 21 in Block Q, as delineated upon that certain map entitled, "Map No. 3 of the Town of POINT RICHMOND," being a portion of lots 51 and 43 of the final partition of the San Pablo Rancho, Contra Costa County, California; filed September 12, 1900, in Book E of Maps, page 107, in the office of the County Recorder of the County of Contra Costa, State of California.

1,200.00

29. PARCEL FOUR:

Unimproved real property located in the City of Berkeley, County of

Alameda, State of California, Legal description as follows:

REAL PROPERTY in the City of Berkeley, County of Alameda, State of California, described as follows:

LOTS 156, 157 and 158, as said lots are shown on the "Map of North Terrace Tract, Alameda Co. Cal.", filed October 12, 1906 in book 20 of Maps, page 80 in the office of the County Recorder of Alameda County.

\$ 150.00

30.

Commercial Account

Bank of America National Trust and Savings Association,
Clay-Montgomery Branch, in name of Peter and Thomas
McDonough

46.66

Total

\$1,214,028.28

Deductions

Schedule J

Funeral and Administration Expenses

Item No.	Amount
1 Executors' commissions—amount estimated	\$ 2,500.00
2 Attorneys' fees—amount estimated	2,500.00
Funeral Expenses	
3 Carew and English Mortuary, Masonic and Golden Gate Avenues, San Francisco	1,179.10
4 Monsignor James P. Cantwell, St. Brigid's Church, Van Ness and Broadway, San Francisco	150.00
5 Rev. Alexander Cody, S.J., St. Ignatius Church, 2130 Fulton Street, San Francisco	100.00
6 The American Florist, 1217 Polk Street, San Francisco, California	157.85
Miscellaneous Administration Expenses	
1 San Francisco Art Gallery—Appraising household furnishings	25.00
2 Walter H. Levison—Appraising jewelry	45.00
3 Bekins Van and Storage Company—Packing and hauling decedent's furniture	192.68
4 F. M. McAuliffe, Appraiser—Fee for appraising probate estate and joint tenancy property	58.43
5 Title Insurance and Guaranty Company—Name Run Report San Francisco real property	5.00
6 Richmond Martinez Abstract and Title Company—Contra Costa County real property	5.00
7 Richmond Martinez Title Company—Richmond real property	15.00
8 California Pacific Title Insurance Company—San Francisco, City and County, real property	12.50
9 Estimated closing costs, Notary fees, etc.	100.00
Total (also enter under the Recapitulation, Schedule O)	
	\$ 7,045.56

Schedule K

Debts of Decedent

Item No.	Creditor and Nature of Claim	Amount
1	Dr. Olav Kaarboe, 909 Hyde Street, San Francisco, California	\$ 650.00
2	Dr. Arthur L. Bloomfield, M.D., Stanford University Hospital, San Francisco, California	750.00
3	Thomas McDonough, 1436-23rd Avenue, San Francisco, California, Payment of following debts incurred by decedent: Hospital bills during last illness (St. Francis Hospital)	\$1,653.40
	Services of nurse	1,165.00
	Office rent—two months	230.00
	Additional nursing service and rent of decedent's apartment	150.00
	Maid service—two months	250.00
	Mrs. Matthews—practical nurse	250.00
		<hr/> 3,698.40
4	Thomas Allee Corporation—closing bill account of decedent—890 Post Street, San Francisco	5.25
5	Borden's Dairy Delivery Company, 1325 Potrero Avenue, San Francisco, California—closing bill account of decedent	2.80
6	Collector of Internal Revenue—1st California—1944 Income Tax Deficiency—Interest to date of payment	208.03
7	Franchise Tax Commissioner—1947 State Income Tax	104.37
8	Sherwood and Lewis, 703 Market Street, services rendered in preparation of income tax returns	200.00
9	Lamaxsou French Laundry, 2671 Sutter Street, San Francisco, California—closing bill account of decedent	11.10
10	The White House—closing bill account of decedent	2.61
11	Pacific Gas and Electric Company—closing bill account of decedent93

12	Claim of Arthur Klang for services as attorney, bookkeeping service and office assistance— balance due—suit filed by creditor—answer filed by bank	6,400.00
13	Claim of Joseph A. Brown, attorney-at-law— services rendered (in dispute)	14,000.00
Total (also enter under the Recapitulation, Schedule O)		\$ 26,033.49

Estate of Peter P. McDonough

Schedule K—Sheet XIV

Schedule O
Recapitulation

Schedule	Gross Estate	Value Under Option	Value at Date of Death
A	Real estate		
B	Stocks and bonds		
C	Mortgages, notes, and cash		\$ 18,395.18
D	Insurance		300.00
E	Jointly owned property — \$1,214,- 028.20—1/2 contributed by dece- dent		607,014.10
F	Other miscellaneous property		8,292.50
G	Transfers during decedent's life		
H	Powers of appointment		
I	Property previously taxed		
Total Gross Estate			<u>\$634,001.78</u>

Schedule	Deductions	Amount
J	Funeral and administration expenses	\$ 7,045.56
K	Debts of decedent	26,033.49
L	Mortgages and liens	
M	Support of dependents	
	Item (a) Total of above deductions	\$ 33,079.05
	Item (b) Value of property subject to claims	26,787.68
	Allowable amount of above deductions (item (a) or item (b), whichever is the smaller.) (See note)	\$ 26,787.68
M	Net losses during administration	
N	Charitable, public, and similar gifts and bequests	\$ 26,787.68
	Total Allowable Deductions, except specific exemption and property previously taxed	

Note: If item (a) exceeds item (b) attach an additional sheet showing the computation of item (b).

SCHEDULE P. NET ESTATE FOR THE BASIC TAX—RESIDENT OR CITIZEN*Instructions.*—This schedule should be used only for the estate of a resident or citizen of the United States.

Total gross estate.....		\$ 634,001.78
Total allowable deductions, except specific exemption and property previously taxed.....	\$ 26,787.68	
Specific exemption.....	100,000.00	
Total deductions, except property previously taxed (item 2 plus item 3).....	\$ 126,787.68	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$	
Net deduction for property previously taxed (item 5 minus item 6).....	\$	
Total deductions (item 4 plus item 7).....		126,787.68
Net estate (item 1 minus item 8).....		\$ 507,214.10

SCHEDULE Q. NET ESTATE FOR THE ADDITIONAL TAX—RESIDENT OR CITIZEN*Instructions.*—This schedule should be used only for the estate of a resident or citizen of the United States.

Total gross estate.....		\$ 634,001.78
Total allowable deductions, except specific exemption and property previously taxed.....	\$ 26,787.68	
Specific exemption.....	60,000.00	
Total deductions, except property previously taxed (item 2 plus item 3).....	\$ 86,787.68	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$	
Net deduction for property previously taxed (item 5 minus item 6).....	\$	
Total deductions (item 4 plus item 7).....		86,787.68
Net estate (item 1 minus item 8).....		\$ 547,214.10

SCHEDULE R. NET ESTATE—NONRESIDENT NOT A CITIZEN OF THE UNITED STATES*Instructions.*—This schedule should be used only for the estate of a nonresident not a citizen of the United States. See instructions for "Deduction of administration expenses, claims, etc." and "Specific exemption" on the back of sheet XX. Use Form 708b (Schedule I) instead of Schedule R for computation of net estate in case of decedent who at the time of his death was domiciled in Canada and not a citizen of the United States.

Value of gross estate in the United States (Schedules A, B, C, D, E, F, G, H, and I).....	\$	\$
Value of gross estate outside the United States, not including real property (attach itemized schedule sheet showing values).....		
Value of total gross estate wherever situated (item 1 plus item 2).....	\$	
Gross deductions under Schedules J, K, L, and M.....		
Net deductions under Schedules J, K, L, and M (that proportion of item 4 that item 1 bears to item 3).....		
Charitable, public, and similar gifts and bequests (Schedule N).....		
Specific exemption.....	2,000.00	
Total deductions, except property previously taxed (item 5 plus items 6 and 7).....	\$	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$	
Net deduction for property previously taxed (item 9 minus item 10).....	\$	
Total deductions (item 8 plus item 11).....		
Net estate (item 1 minus item 12).....		\$

Peter P. McDonough

ESTATE OF.....

10-10422-4

SCHEDULES P, Q, AND R—SHEET XIX

Computation of Tax

1.	Gross basic tax (Use column (1) of Table, Sheet XXII)	\$ 17,860.71	
2.	Credit for State inheritance, etc., taxes (not to exceed 80% of item 1)	14,288.57	
3.	Gross basic tax less credit for State inheritance, etc., taxes (item 1 minus item 2)		\$ 3,572.14
4.	Total gross taxes (basic and additional) (Tentative Tax) (Use column (2) of Table, Sheet XXII)	\$162,224.94	
5.	Gross basic tax	17,860.71	144,364.23
6.	Gross additional tax (item 4 minus item 5)		
7.	Total gross taxes less credit for State inheritance, etc., taxes (item 3 plus item 6)		\$147,936.37
8.	Credit for Federal gift taxes		
9.	Credit for foreign death duties		
10.	Total credit for Federal gift taxes and foreign death duties (item 8 plus item 9)		
11.	Net estate tax payable (item 7 minus item 10)		\$147,936.37

Estate of Peter P. McDonough Computation of Tax—Sheet XX

EXHIBIT 2

Treasury Department
Internal Revenue Service
San Francisco 5, Calif.

May 25, 1951.

Office of
Internal Revenue Agent in Charge
San Francisco Division
74 New Montgomery Street.

In Replying Refer to:

Estate of Peter P. McDonough.
Date of death: July 8, 1947.

Bank of America, NT & SA, Executors,
300 Montgomery Street,
San Francisco, California.

Gentlemen:

There is enclosed for your information and files a copy of a report covering the examination of the return, Form 706, of the above-named estate, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Very truly yours,

/s/ F. M. HARLESS,

Internal Revenue Agent in
Charge.

ovh

Enclosure.

- ☒ **Deficiency:** The collector will present to you at an early date a bill for payment of the net deficiency in tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.
- ☐ **Overassessment:** After the overassessment has been certified to the collector by the Commissioner of Internal Revenue, the amount will be refunded or credited.

Preliminary Statement

Statement of Tax Liability

Estate Tax—Tax previously assessed per RAR\$148,643.33

Adjustments to This Report

Deficiency\$ 646.51

Correct tax liability\$149,289.84

The deficiency here results principally from a reduction in the amount of attorneys' fees and executors' commissions allowed previously on the basis of the amounts therefor actually expended.

Table of Contents

- Schedule 1. Line Adjustments.
Schedule 1-A. Explanation of changes in gross estate.
Schedule 1-B. Explanation of changes in deductions.
Schedule 2. Computation of tax.

ESTATE OF Peter P. McDonoughDATE OF DEATH July 8, 1947SCHEDULE 1

LINE ADJUSTMENTS—ESTATE TAX

	ADDITIONS TO VALUE OF ESTATE	DEDUCTIONS FROM VALUE OF ESTATE	CORRECTED
A. Real estate.....	\$ 0.00		\$ 0.00
B. Stocks and bonds.....	33,714.06		33,714.06
C. Mortgages, notes, and cash.....	18,395.18		18,395.18
D. Insurance.....	300.00		300.00
E. Jointly owned property.....	577,971.92		577,971.92
F. Other miscellaneous property.....	8,292.50		8,292.50
G. Transfers during decedent's life.....			
H. Powers of appointment.....			
I. Property previously taxed.....			
TOTAL GROSS ESTATE.....	\$638,673.66		\$638,673.66
J-1. Funeral and administration expenses.....	\$ 15,515.56	\$2,085.52	\$ 13,430.04
K-2. Debts of decedent.....	13,633.19		13,633.19
L-3. Mortgages and liens.....			
M-4. Support of dependents.....			
M-5. Net losses during administration.....			
a. Allowable amount of above deductions.....	\$ 29,179.05	\$2,085.52	\$ 27,093.53
M-1-7. Bequests, etc., to surviving spouse.....			
a. Adjusted gross estate.....			
b. Net amount deductible for bequests, etc., to surviving spouse (Item 7, or one-half of Item 8, whichever is smaller).....			
N-10. Charitable, etc., bequests.....			
TOTAL ALLOWABLE DEDUCTIONS (Items 6, 9, and 10).....	\$ 29,179.05	\$2,085.52	\$ 27,093.53
FOR BASIC TAX			
Specific exemption.....	\$100,000.00		\$100,000.00
Deduction for property previously taxed.....	0.00		0.00
TOTAL DEDUCTIONS.....	\$129,179.05	\$2,085.52	\$127,093.53
NET ESTATE.....	\$509,494.61	\$2,085.52	\$511,580.13
FOR ADDITIONAL TAX			
Specific exemption.....	\$ 60,000.00		\$ 60,000.00
Deduction for property previously taxed.....	0.00		0.00
TOTAL DEDUCTIONS.....	\$ 60,000.00	\$2,085.52	\$ 57,914.48
NET ESTATE.....	\$511,580.13	\$2,085.52	\$511,580.13

Schedule No. 1-B
Explanation of Changes in Deductions

	Per RAR	Corrected
Schedule J—Funeral and Administration		
Expenses		
Executors' Commissions	\$ 6,000.00	\$ 4,957.24
Attorneys' Fees	7,500.00	6,457.24
	<hr/>	<hr/>
Totals	\$13,500.00	\$11,414.48
		<hr/>
	11,414.48	
	<hr/>	
Decrease	\$ 2,085.52	
	<hr/>	

To adjust for amounts allowed for executors' commissions and attorneys' fees in RAR, and for such amounts actually paid.

ESTATE OF Peter P. McDonoughDATE OF DEATH July 8, 1947SCHEDULE 2

COMPUTATION OF ESTATE TAX

	PER STATE LAW	CORRECTED
Net estate (for basic tax).....	\$ 509,494.61	\$ 511,580.23
Net estate (for additional tax).....	509,494.61	551,580.23
1. Gross basic tax.....	17,974.73	18,079.01
2. Credit for State inheritance, etc., taxes.....	14,379.70	14,463.21
3. Gross basic tax, less credit for State inheritance, etc., taxes (item 1 minus item 2).....	\$ 3,594.95	\$ 3,615.80
4. Total gross taxes (basic and additional).....	163,023.21	163,753.05
5. Gross basic tax.....	17,974.73	18,079.01
6. Gross additional tax (item 4 minus item 5).....	145,048.38	145,674.04
7. Total gross taxes, less credit for State inheritance, etc., taxes (item 3 plus item 6).....	148,643.33	149,289.84
8. Credit for Federal gift taxes.....	0.00	0.00
9. Credit for foreign death duties.....	0.00	0.00
10. Total credit for Federal gift taxes and foreign death duties (item 8 plus item 9).....	0.00	0.00
11. Net estate tax payable (item 7 minus item 10).....	148,643.33	149,289.84
		148,643.33
Deficiency/overpayment.....		\$ 646.51

Form 706
Estate Tax Return
(Revised July 1947)

UNITED STATES

ESTATE TAX RETURN

(To be executed and filed in duplicate)

Return of nonresident not citizens of the United States may generally be on Form 706A instead of this form. For details see back of sheet XX.

Decedent's name THOMAS M. BOSCHDate of death SEPTEMBER 12, 1948Residence (domicile) at time of death SAN FRANCISCO, CALIFORNIA.Citizenship (nationality) at time of death U.S.A.

GENERAL INSTRUCTIONS

STATUTE AND GENERAL DESCRIPTION

The Federal estate tax is neither a property nor an inheritance tax. It is imposed upon the transfer of the entire net estate and not upon any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing on the question of liability or the extent thereof.

Federal estate taxation (chapter 3 of the Internal Revenue Code) consists of the basic estate tax (subchapter A) and the additional estate tax (subchapter B).

In the case of a citizen or resident of the United States, a specific exemption of \$100,000 is authorized for the purpose of the basic estate tax, and a specific exemption of \$40,000 is authorized for the purpose of the additional estate tax.

A credit is authorized against the basic estate tax (not in excess of 80 percent thereof) for estate, inheritance, legacy, or succession taxes paid a State, Territory, the District of Columbia, or any possession of the United States. No such credit is allowable against the additional estate tax.

Credits for Federal gift taxes are, under certain conditions, allowable against both the basic and the additional estate taxes.

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Different provisions control the determination of the tax liability of estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States. (References herein to the deceased person's residence mean the deceased person's domicile.) For specific information on Federal estate taxation in the case of a nonresident not a citizen of the United States, see the "Additional Instructions for Estates of Nonresidents not Citizens of the United States" on the back of sheet XX.

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The value of the gross estate at the date of the decedent's death governs the liability for the filing of the return, regardless of any situation as of a subsequent time that may be adopted by the executor under the provisions of section 811 (j) of the Internal Revenue Code.

TIME AND PLACE FOR FILING RETURN

The return is due 15 months after the date of the decedent's death. The return for the estate of a resident decedent must be filed with the collector in whose district the decedent had his domicile at the time of death. The return for the estate of a nonresident decedent must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or if no part of the gross estate was situated in the United States, it must be filed with the Collector for the Second District of New York, or with such collector as the Commissioner may designate.

(over)

(Space for use of collector)

RECEIVED

PAYMENT OF TAX

The tax is due 15 months after the date of the decedent's death, and must be paid within such period unless an extension of time for payment thereof has been granted by the Commissioner. Check or money order in payment of the tax should be made payable to "Collector of Internal Revenue at _____" naming city and State in which is located the office of the collector with whom the return is filed.

GROSS ESTATE

In addition to the general provision of the statute requiring the inclusion in the gross estate of property to the extent of the decedent's interest therein, other provisions specifically include, as more fully explained hereinafter in the instructions for the separate schedules, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, community property, life insurance even though payable to beneficiaries other than the estate, property over which the decedent possessed a power of appointment, and dower or curtesy (or statutory estate in lieu thereof) of the surviving spouse.

SUPPLEMENTAL DOCUMENTS

If the decedent was a resident and died testate, two copies of the will, one of them certified, must be filed.

If the decedent was a nonresident citizen, the following documents must be filed with the return:

(1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court.

(2) A copy of the return filed under the foreign inheritance, estate, legacy, succession tax, or other death duty act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

(3) If the decedent died testate, a certified copy of the will.

Other supplemental documents may be required as hereinafter explained under the instructions for the several schedules.

EXECUTION OF RETURN

This form consists of the cover sheets and 30 inside sheets numbered in consecutive order. A complete set should be used for every copy of the return required. For convenience in typing carbon copies, the sets as issued may be readily separated and the corresponding sheets matched. When completed, each copy of the return to be filed must be permanently fastened together with all sheets in proper order. Any suitable type of paper fastener may be utilized for this purpose. Ordinary wire staples are recommended for the return of average size. The return must be filed in duplicate. All sheets provided, numbered 1 to XXII, must be included.

Write only on one side of each sheet of paper. If there is not sufficient space for all entries under any of the printed schedules, use additional sheets of the same size, and insert in the proper order in the return. All information required, as indicated under "General Information," must be supplied in the spaces provided. The

10-70606-7 SEEDY I



Gross Estate

Schedule A

Real Estate

Did the decedent, at the time of his death, own any real estate in the United States? Yes.

Item No.	Value at Date of Death
----------	---------------------------

Parcel I

1. $\frac{1}{2}$ of all that certain real property situate, lying and being in the city and county of San Francisco, State of California, described as follows, to wit: Beginning at a point on the easterly line of Twenty-third Ave., distant thereon 200 feet southerly from the southerly line of Judah St.; running thence southerly along said line of Twenty-third Ave. 50 feet; thence at a right angle easterly 96 ft., more or less, to a line drawn southerly from a point on the southerly line of Judah St., distant thereon 113 ft., and 5 inches, easterly from the easterly line of Twenty-third Ave., to a point on the northerly line of Kirkham St., distant thereon 70 ft. and 6 inches easterly from the easterly line of Twenty-third Ave.; thence northeasterly along the line so drawn 50 ft., more or less, to a line drawn easterly from the point of beginning, at a right angle to the easterly line of Twenty-third Ave.; thence westerly along said last line so drawn 99 ft., more or less, to the point of beginning. Being portion of Outside Land Block No. 747. (See Schedule I)\$7,500.00

Parcel II

2. $\frac{1}{2}$ of all that certain real property situate, lying and being in the City and County of San Francisco, State of California, described as follows, to wit: Beginning at a point on the westerly line of Seventeenth Ave., distant thereon 75 ft., southerly from the point formed by the intersection of the westerly line of Seventeenth Ave., with the southerly line of Geary Blvd.; and running thence southerly along said line

of Seventeenth Ave., 25 ft.; thence at a right angle westerly 82 ft., and 6 inches; thence at a right angle northerly 25 ft.; and thence at a right angle easterly 82 ft. and 6 inches to the point of beginning. Being part of Outside Land Bloek No. 267. (See Schedule I) 5,750.00

Parcel III

3. $\frac{1}{2}$ of all that certain real property situated in the City of Richmond, County of Contra Costa, State of California, described as follows: Lots 19, 20 and 21 in Bloek "Q" as delineated upon that certain map entitled, "Map No. 3 of the Town of Point Richmond" being a portion of lots 51 and 43 of the final partition of the San Pablo Rancho, Contra Costa County, California, filed Sept. 12, 1900, in Map Book "E," page 107, in the office of the County Recorder of the County of Contra Costa, State of California 600.00

Parcel IV

4. $\frac{1}{2}$ of all that certain real property situate, lying and being in the City of Berkeley, County of Alameda, State of California, described as follows: Lots 156, 157 and 158, as said lots are shown on the "Map of North Terrace Tract, Alameda County, California," filed Oct. 12, 1906, in book 20 of Maps, page 80, in the office of the County Recorder of Alameda County 225.00

SCHEDULE I

PROPERTY PREVIOUSLY TAXED

(See instructions on reverse of preceding sheet and this sheet)

JULY 8, 1947

Name of donor or prior decedent PETER P. MC DONOUGH If a decedent, show date of death _____
 If a donor, show date of gift _____ Residence of donor at time of gift, or of prior decedent at time of death _____

Item No.	Description of property, subsequent valuation dates, and description and amounts of mortgages or other liens paid	(Column A) Value under option	(Column B) Income under apportion	(Column C) Value at date of death	(Column D) Income accrued at date of death	(Column E) Finally determined value as of date of gift
1		\$	\$	\$	\$	\$
Item (b) below represents pro rate payment of Federal Estate tax due in Estate of Peter Mc Donough by Estate of Thomas Mc Donough						
TOTALS		\$	\$	\$ 442,408.18	\$ 1,625.00	\$ 432,682.59

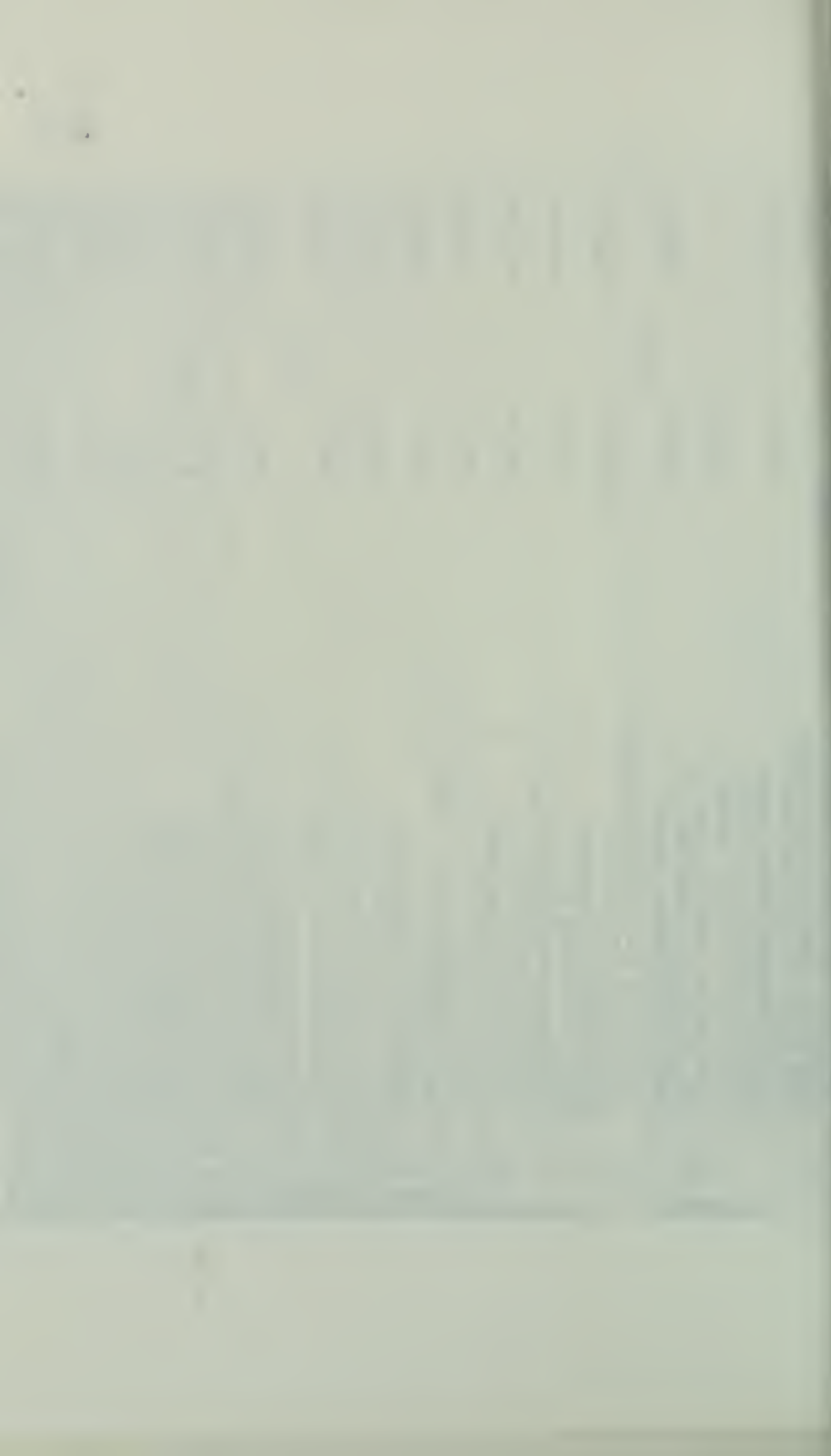
Total included in gross estate (total of columns A and B, or total of columns C and D, whichever is applicable) (also enter under Reconciliation, Schedule O) - \$ 444,033.18
 (e) Gross deduction (total of applicable column A or C, or total of column E, whichever is lower) - \$ 432,682.59
 (b) Total amount paid on mortgages or other liens deducted in prior estate or gift (enter detailed information at bottom of column headed "Description") - \$ 0-
 (c) Deduction for property previously taxed without proportionate reduction (item (e) minus item (b)) (also enter under Schedules P and Q, or Schedule E) - \$ 13,350.59

(If more space is needed, insert additional sheets of same size)

ESTATE OF THOMAS MC DONOUGH



1.	\$4,000.00 P.V. International Hydro-Electric System 6% Deb. due 4-1-44 (See Schedule B)	2,675.00	4,025.00
	1/2 of 30% liquidating dividend on 8000 International Hydro-Electric System 6% Conv.Gold Deb.due 4-1-44 (See Schedule C)	1,200.00	
2.	100 Shs.Amer.Tel. & Tel. Co. capital stk. \$100. P.V. New York Corp.(See Schedule B) Quarterly dividend declared 8-18-43	15,187.50	15,937.50
3.	3750 Shs.Bank of America N.Y. & S.A.,Common Stk. \$12.50 P.V. (See Schedule B)	168,750.00	167,343.75
4.	500 Shs.Gen.Motors Corp.Common Stk. \$10. P.V. (See Schedule B)	31,158.75	30,062.50
5.	500 Shs.Gen.Public Utilities Corp.Common Stk. \$5. \$V. (See Schedule B)	6,437.50	7,281.25
6.	125 Shs.Worth Amer.Oil Consolidated, Common Stk. (See Schedule B)	7,187.50	3,687.50
7.	605 Shs.Pacific Gas & Electric Co.Common Stock, (See Schedule B)	20,645.62	22,275.00
8.	1000 Shs.Pacific Public Service Co. Common Stock, (See Schedule B)	17,500.00	15,125.00
9.	100 Shs.Pacific Tel. & Tel. Co.Common (See Schedule B) Quarterly dividend declared 9-2-49	9,525.00	10,175.00
	50 Shs.South Carolina Electric & Gas Co. Common Stock (See Schedule B)	378.13	350.00
11.	1250 Shs.Standard Oil Co. of Calif.Common Stock (See Schedule B) Quarterly dividend declared 7-29-48	70,437.50	76,075.00
12.	512-1/2 Shs.Standard Oil Co. of New Jersey, Common Stk. (See Schedule B)	1,250.00	
13.	211 Shs. Texas Public Service Co. Common Stk. (See Schedule B)	38,309.38	38,593.75
14.	10,000 Shs.Transamerica Corp. Common (See Schedule B)	5,143.13	4,128.00
		111,075.00	123,750.00



15.	1500 Shs. Union Oil Co. of California. Common Stock (See Schedule B)	148,093.75	33,750.00
16.	Parcel I, 1/2 of Improved Real Property 1136 23rd Ave., San Francisco, Calif. (See Schedule A)	7,500.00	7,500.00
17.	Parcel II, 1/2 of Improved Real Property 115 17th Ave., San Francisco, Calif. (See Schedule A)	5,750.00	5,750.00
18.	Parcel III, 1/2 of Unimproved Real Property Lots 19, 20, & 21 Block Q Point Richmond Contra Costa Co. Calif. (See Schedule A)	600.00	600.00
19.	Parcel IV, 1/2 of Unimproved Real Property Lots 156, 157 & 158 Berkeley, Alameda County, Calif. (See Schedule A)	225.00	225.00
20.	CASH (SEE RECOMMENDED ITEM 1 SCHEDULE C) 1/2 proceeds of Sale of following: 5 Shs. Mission Corporation Common 220 Shs. Barnsdall Oil Co. Common 100 Shs. Consolidated Natural Gas Co. Common 125 Shs. Middle States Petroleum Corp. Class B. Stock	133.24 4,565.29 2,368.65 148.39 7,151.11	97.19 3,120.13 2,384.58 304.69
LESS: Federal Estate Tax paid by this decendant on estate received from prior decendant		584,094.23 141,686.05 81,685.18	1,625.00 573,348.64 141,686.05 81,685.00
			\$132,682.59

Deductions

Schedule J

Funeral and Administration Expenses

* * *

Funeral Expenses

	Amount
Carew & English Inc., 350 Masonic Ave., San Francisco, Calif., Funeral of Decedent	\$1,252.03
Rev. Alexander Cook, S.J., 2130 Fulton St., San Francisco, Calif., Funeral Mass of Decedent	150.00
St. Brigid's Church Broadway & Van Ness Ave., San Francisco, Calif., Funeral Services for Decedent	100.00
L. Bocci & Sons, Colma, Calif., Inscription on Decedent's Tomb	37.50
Castro Flower Shop, 489 Castro St., San Francisco, Calif., Floral Blanket for Casket of Decedent	113.30
<hr/>	
Total (also enter under the Recapitulation, Schedule O)	\$1,652.83

Estate of Thomas McDonough

Schedule J—Sheet XIII

Schedule K

Debts of Decedent

Item No.	Creditor and Nature of Claim	Amount
1.	Flora Riedel, nursing services 9/2/48 to 9/17/48 ..\$	75.00
2.	Helen Conklin, 795 Geary St., San Francisco, Calif., nursing services, rendered decedent	12.35
3.	F. J. Kilmartin, 125 Moncada Way, San Francisco, Calif., reimbursement for amount paid Rein Moh for nursing services on 9/13/48	12.00
4.	Dorothy Nesman, 2872 Washington St., San Francisco, Calif., nursing services 9/11/48 to 9/12/48	22.00
5.	Native Sons Florist, Colma, San Mateo Co., Calif., charges for flowers for graves of Mr. and Mrs. Peter McDonough	14.35

Schedule O
Recapitulation

Schedule	Gross Estate	Value Under Option	Value at Date of Death
A	Real estate		\$ 14,075.00
B	Stocks and bonds		580,420.26
C	Mortgages, notes, and cash		29,040.66
D	Insurance		
E	Jointly owned property		
F	Other miscellaneous property ..		6,551.20
G	Transfers during decedent's life		
H	Powers of appointment		
I	Property previously taxed		444,033.18
	Total Gross Estate		<u>\$ 1,074,120.20</u>

Schedule	Deductions	Amount
J	Funeral and administration expenses	\$ 1,652.83
K	Debts of decedent	19,361.57
L	Mortgages and liens	
M	Support of dependents	
	Item (a) Total of above deductions	\$ 21,014.40
	Item (b) Value of property subject to claims	<u>1,074,120.20</u>
	Allowable amount of above deductions (item (a) or item (b), whichever is the smaller)	\$ 21,014.40
M	Net losses during administration	
N	Charitable, public, and similar gifts and bequests	5,000.00
	Total Allowable Deductions, except specific exemption and property previously taxed	<u>\$ 26,014.40</u>

SCHEDULE P. NET ESTATE FOR THE BASIC TAX—RESIDENT OR CITIZEN*Instructions.*—This schedule should be used only for the estate of a resident or citizen of the United States.

Total gross estate.....		\$ 1,074,120.20
Total allowable deductions, except specific exemption and property previously taxed.....	\$ 26,014.40	
Specific exemption.....	100,000.00	
Total deductions, except property previously taxed (item 2 plus item 3).....	\$ 126,014.40	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$ 432,682.69	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$ 50,997.78	
Net deduction for property previously taxed (item 5 minus item 6).....	\$ 381,684.81	
Total deductions (item 4 plus item 7).....		\$ 507,700.21
Net estate (item 1 minus item 8).....		\$ 566,410.99

SCHEDULE Q. NET ESTATE FOR THE ADDITIONAL TAX—RESIDENT OR CITIZEN*Instructions.*—This schedule should be used only for the estate of a resident or citizen of the United States.

Total gross estate.....		\$ 1,074,120.20
Total allowable deductions, except specific exemption and property previously taxed.....	\$ 26,014.40	
Specific exemption.....	60,000.00	
Total deductions, except property previously taxed (item 2 plus item 3).....	\$ 86,014.40	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$ 432,682.69	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$ 34,894.31	
Net deduction for property previously taxed (item 5 minus item 6).....	\$ 397,798.28	
Total deductions (item 4 plus item 7).....		\$ 483,812.68
Net estate (item 1 minus item 8).....		\$ 590,307.52

SCHEDULE R. NET ESTATE—NONRESIDENT NOT A CITIZEN OF THE UNITED STATES*Instructions.*—This schedule should be used only for the estate of a nonresident not a citizen of the United States. See instructions under "Deduction of administration expenses, claims, etc." and "Specific exemption" on the back of sheet XX. Use Form 708b (Schedule (I)) instead of Schedule R for computation of net estate in case of decedent who at the time of his death was domiciled in Canada and not a citizen of the United States.

Value of gross estate in the United States (Schedules A, B, C, D, E, F, G, H, and I).....	\$.....	\$.....
Value of gross estate outside the United States, not including real property (attach itemized schedule sheet showing values).....	\$.....	
Value of total gross estate wherever situated (item 1 plus item 2).....	\$.....	
Gross deductions under Schedules J, K, L, and M.....		
Net deductions under Schedules J, K, L, and M (that proportion of item 4 that item 1 bears to item 3).....		
Charitable, public, and similar gifts and bequests (Schedule N).....		
Specific exemption.....	2,000.00	
Total deductions, except property previously taxed (item 5 plus items 6 and 7).....	\$.....	
Deduction for property previously taxed without proportionate reduction (Schedule I, item (c)).....	\$.....	
Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations").....	\$.....	
Net deduction for property previously taxed (item 9 minus item 10).....	\$.....	
Total deductions (item 8 plus item 11).....		
Net estate (item 1 minus item 12).....		\$.....

ESTATE OF **THOMAS MC DONOUGH**

16-10428-4

SCHEDULES P, Q, AND R—SHEET XIX

Computation of Tax

1. Gross basic tax (Use column (1) of Table, Sheet XXII)	\$ 20,820.51
2. Credit for State inheritance, etc., taxes (not to exceed 80% of item 1)	16,656.41
3. Gross basic tax less credit for State inheritance, etc., taxes (item 1 minus item 2)	\$ 4,164.10
4. Total gross taxes (basic and addi- tional) (Tentative Tax) (Use col- umn (2) of Table, Sheet XXII) ..	\$177,307.63
5. Gross basic tax	20,820.51
6. Gross additional tax (item 4 minus item 5)	156,487.12
7. Total gross taxes less credit for State inheritance, etc., taxes (item 3 plus item 6)	\$160,651.22
8. Credit for Federal gift taxes	
9. Credit for foreign death duties	
10. Total credit for Federal gift taxes and foreign death duties (item 8 plus item 9)	
11. Net estate tax payable (item 7 minus item 10)	\$160,651.22

EXHIBIT 4

Treasury Department

Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Oct. 29, 1951.

Office of

Internal Revenue Agent in Charge
San Francisco Division
IRA:EG:90-D:IB

IT:EG:23853—First California
Estate of Thomas McDonough.
Date of death: September 13, 1948.

Estate of Thomas McDonough
Bank of America, National Trust
and Savings Association, Executors
P. O. Box 3415 Rincon Annex
San Francisco 20, California.

Gentlemen:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of \$26,173.64, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the

90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOHN B. DUNLAP,
Commissioner;

By /s/ R. L. SUTHERLAND,
Acting Internal Revenue
Agent in Charge.

Enclosures:

Statement

Form 890

Form 1276

Exhibit A.

Statement

San Francisco

IRA:EG:90-D:IB

Estate of Thomas McDonough
 Bank of America, National Trust
 and Savings Association, Executors
 P. O. Box 3415 Rineon Annex
 San Francisco 20, California

IT:EG:23853—First California

Estate of Thomas McDonough

Date of death: September 13, 1948

	Liability	Assessed	Deficiency
Estate tax	\$186,824.86	\$160,651.22	\$ 26,173.64

In making this determination of the Federal estate tax liability of the above-named estate, it is noted that you did not avail yourself of the privilege of filing a protest.

Adjustments to Net Estate

	For Basic Tax	For Additional Tax
Net estate as disclosed by the return ..	\$566,410.99	\$590,307.52
Additions in value of net estate and decreases in deductions:		
(a) Property previously taxed, Schedule I	93.34	93.34
(b) Deduction for property previously taxed	65,939.08	68,120.00
	<hr/> \$632,443.41	<hr/> \$658,520.86
Increases in deductions:		
(c) Funeral and administra- tion expenses, Schedule J	41,021.26	41,021.26
Net estate as adjusted	<hr/> \$591,422.15	<hr/> \$617,499.60

Explanation of Adjustments

	Returned	Determined
(a) Property previously taxed Schedule I	\$144,033.18	\$444,126.52
Increase	\$ 93.34	

The increase shown above is computed as follows:

Column A	\$584,094.23	\$584,094.23
Column D	1,625.00	1,625.00
	<hr/>	<hr/>
	\$585,719.23	\$585,719.23
Less: Federal estate tax	141,686.05	141,592.71
	<hr/>	<hr/>
Total	\$444,033.18	\$444,126.52
Increase		\$ 93.34

(b) Deduction for property previously taxed: for basic tax	\$381,694.81	\$315,755.73
Decrease		\$ 65,939.08
for additional tax	\$397,798.28	\$329,678.28
Decrease		\$ 68,120.00

The amount determined above as the deduction for property previously taxed is as shown on Exhibit "A" attached.

(c) Funeral and administration expenses, Schedule J	\$ 1,652.83	\$ 42,674.09
Increase		\$ 41,021.26

An additional deduction for funeral and administration expenses is allowed as follows:

Total attorneys' fees	\$ 58,317.68
Executors' commissions	33,317.68
Caretaker's expense	2,307.59
Appraisal fees	844.27
Insurance	133.43
Miscellaneous administration expenses	713.74
	<hr/>
Total	\$ 95,634.39
Deduct what was claimed on the estate 1949 Income Tax return..	54,613.13
	<hr/>
Balance allowed	\$ 41,021.26

Computation of Estate Tax

	Returned	Determined
Gross estate for basic tax	\$ 1,074,120.20	\$ 1,074,213.54
Deductions	507,709.21	482,791.39
Net estate for basic tax	\$ 566,410.99	\$ 591,422.15
Gross estate for additional tax	\$ 1,074,120.20	\$ 1,074,213.54
Deductions	483,812.68	456,713.94
Net estate for additional tax	\$ 590,307.52	\$ 617,499.60
Gross basic tax	\$ 22,071.11	
Credit for State inheritance, etc. taxes	0.00	\$ 22,071.11
Total gross taxes (basic and addi- tional)	\$ 186,824.86	
Gross basic tax	22,071.11	164,753.75
Total tax payable		\$ 186,824.86
Estate tax assessed, November, 1949, list, Page 8, Line 1, First Califor- nia District		160,651.22
Deficiency in estate tax		\$ 26,173.64

Upon receipt of a waiver or upon expiration of 90 days from the date of this letter, if a petition is not filed with the Tax Court of the United States, the deficiency of \$26,173.64 will be assessed. In the event that evidence of the payment of State, estate, inheritance, legacy or succession taxes, as required by Section 81.9 of Regulations 105 is filed within the 90-day period, the net deficiency of \$8,516.75 will be assessed.

(ET-SF-42

EXHIBIT "A"

Estate of : Thomas McDonoughDate of death: September 13, 1948EXPLANATION OF CHANGES IN DEDUCTION FOR PROPERTY PREVIOUSLY TAXED

- (a) Total of P.P.T. included in gross estate (Schedule I, total of applicable columns A or C) \$444,126.52
- (b) Gross P.P.T. deduction (Total of applicable columns A or C, or total of E, whichever is lower) 373,894.78 *
- (c) Less amount paid prior to decedent's death on mortgages or liens deducted in prior estate or gift _____
- (d) "Amount otherwise deductible" for P.P.T. without proportionate deduction (b. Minus c) 373,894.78
- (e) Liens on P.P.T.:
 Mortgages _____
 Real estate taxes _____
 Collateral loans _____
- (f) Total of liens on P.P.T. _____
- (g) First proportionate limitation:
 (f) 0 x (d) 373,894.78 = (g) 0
 (a) 444,126.52
- (h) "Amount otherwise deductible" after first limitation (d minus g) 373,894.78
- (i) Total of P.P.T. included in gross estate (same as a) 444,126.52
- (j) Reduce P.P.T. to amount available for payment of general claims by deducting:
 Mortgages and liens _____
 Real estate taxes _____
 Assets exempt from creditors _____
- Total of items listed under (j) (j) _____
- (k) P.P.T. available for payment of general claims (i minus j) 444,126.52
- (m) Proportion to determine "amount otherwise deductible" for purpose of computing the further reduction:
 (k) 444,126.52 x (d) 373,894.78 = (m) 373,894.78
 (i) 444,126.52

(T-FF-47)

Exhibit "A" - continued

Estate of: Thomas McDonoughDate of death: September 11, 1948EXPLANATION OF CHANGES IN DEDUCTION FOR PROPERTY PREVIOUSLY TAXED

(a) Total of gross taxable estate \$1,074,213.54

(b) Items not available for payment of general claims:

Jointly owned property _____

Transfers _____

Powers of appointment _____

Insurance payable to specific beneficiaries _____

Mortgages and liens payable (not in excess of value of property) _____

Assets not subject to general claims _____

Total of items listed under (b) _____ (c) _____

(d) Gross estate subject to payment of claims (a minus c) 1,074,213.54

FOR BASIC TAX

(e) Total deductions from gross taxable estate, including specific exemption and excluding P.F.T. 167,035.66

Less mortgages and liens (not in excess of value of property covered) _____ (r) 167,035.66

"Amount otherwise deductible" after first limitation (same as h) _____ (h) _____

(s) Second proportionate limitation: (a) 373,894.78 x (r) 167,035.66 (s) 58,139.05

(p) 1,074,213.54

(t) Net deduction for P.F.T. - basic tax (h minus s) 315,755.73

FOR ADDITIONAL TAX

(i) Total deductions from gross taxable estate, including specific exemption and excluding P.F.T. 127,035.66

Less mortgages and liens (not in excess of value of property covered) _____ (v) 127,035.66

"Amount otherwise deductible" after first limitation (same as h) _____ (h) 373,894.78

(w) Second proportionate limitation: (a) 373,894.78 x (v) 127,035.66 (w) 44,216.50

(p) 1,074,213.54

(x) Net deduction for P.F.T., additional tax (h minus w) 329,678.28

Thomas McDonough

EXHIBIT "A" - continued

* Total gross prior estate		\$636,673.66
<u>Deduct:</u>		
Deductions claimed and allowed	\$ 27,093.53	
Federal estate taxes	149,289.84	
Inheritance taxes	49,263.81	
Net specific legacies to others than present decedent	<u>39,116.47</u>	<u>264,763.65</u>
Theoretical balance of property previously taxed in present estate		\$373,910.01
Adjust for pro-rata of unidentified item of property previously taxed in the present estate from the prior estate in the gross amount of \$23.30		<u>15.23</u>
Identified property previously taxed		\$373,894.78

Endorsed : Filed November 10, 1934.



[Title of District Court and Cause.]

STIPULATION AND ORDER ADMITTING
INTO EVIDENCE AND ADDING CER-
TAIN PAGES TO EXHIBIT 3

It Is Hereby Stipulated by and between plaintiff and defendant herein and their respective counsel that the photostatic copies of Schedule B—Stocks and Bonds, and Schedule C—Mortgages, Notes and Cash, attached hereto, being part of Form 706, Estate Tax Return filed in the Estate of Thomas McDonough, may and shall be added to Exhibit 3 (the said Form 706) now admitted into evidence with the same force and effect as though originally included in said Exhibit.

/s/ J. W. RADIL,

/s/ F. J. KILMARTIN,
KNIGHT, BOLAND &
RIORDAN,

Attorneys for Plaintiff.

/s/ LLOYD H. BURKE,

/s/ GEORGE A. BLACKSTONE,
Attorneys for Defendant.

ORDER

Pursuant to the foregoing Stipulation, the photostatic copies of Schedules B and C attached hereto are hereby admitted into evidence as a part of Ex-

hibit 3 with the same force and effect as though originally included in said Exhibit.

Dated: December 21, 1954.

/s/ O. D. HAMLIN,

Judge of the District Court of
the United States.

Schedule B

Stocks and Bonds

(1) Did the decedent, if a resident or citizen of the United States, own any stocks or bonds, regardless of situs, at the time of his death? Yes.

Item No.		Value at Date of Death
Bonds		
1.	\$3,400.00 par value American Telephone and Telegraph Company 2¾% Convertible Debentures due Dec. 15, 1957	\$ 3,816.50
2.	\$25,000.00 par value Central Public Utility Corporation 20-year Income Bonds due August 1, 1952	4,000.00
3.	\$4,000.00 par value International Hydro Electric System 6% Debentures due April 1, 1944. (See Schedule I)	2,675.00
Stocks		
4.	100 shares American Telephone and Telegraph Company capital stock, \$100.00 par value, a New York corporation. (See Schedule I)	15,187.50
4a.	Quarterly dividend declared 8/18/48	225.00
5.	3,750 shares Bank of America, N.T.&S.A., common stock, \$12.50 par value, organized under the laws of the U. S. of America. (See Schedule I)	168,750.00

6. 500 shares Central Public Utility Corp., common voting trust certificates, \$1.00 par value, a Delaware corporation	no value
7. 500 shares General Motors Corp. common stock, \$10.00 P.V., a Delaware corporation. (See Schedule I)	31,158.75
8. 500 shares General Public Utilities Corp. common stock, \$5.00 P.V., a New York corporation. (See Schedule I)	6,437.50
9. 125 shares North American Oil Consolidated capital stock, \$10.00 P.V., a California corporation. (See Schedule I)	7,187.50
10. 605 shares Pacific Gas and Electric Company common stock, \$25.00 P.V., a California corporation. (See Schedule I)	20,645.62
11. 1,000 shares Pacific Public Service Company common stock, no P.V., a California corporation. (See Schedule I)	17,500.00
12. 200 shares Pacific Telephone and Telegraph Company common stock, \$100.00 P.V., a California corporation. (See Schedule I)	19,050.00
13. Quarterly dividend due 9/13/48	300.00
14. 50 shares South Carolina Electric and Gas Company common stock, \$4.50 P.V., a South Carolina corporation. (See Schedule I)	378.13
15. 1,250 shares Standard Oil Co. of Calif. common stock, no P.V., a Delaware corporation. (See Schedule I)	78,437.50
16. Dividend declared 7/29/48	(V) 1,250.00
17. 512½ shares Standard Oil Company of New Jersey common stock, \$25.00 P.V., a New Jersey corporation. (See Schedule I)	38,309.38
18. 211 shares Texas Public Service Company common stock, \$8.00 P.V., a Delaware corporation. (See Schedule I)	5,143.13
19. 10,000 shares Transamerica Corp. capital stock, \$2.00 P.V., a Delaware corporation. (See Schedule I)	111,875.00
20. 1,500 shares Union Oil Company of Calif. common stock, \$25.00 P.V., a California corporation. (See Schedule I)	48,093.75
Total	<u>\$580,420.26</u>

SCHEDULE C
MORTGAGES, NOTES, AND CASH

(See instructions on reverse of the preceding sheet)

Did the decedent, at the time of his death, own any mortgages, notes, or cash? YES (Answer "Yes" or "No.")

Description	Subsequent valuation date	Value under option	Value at date of death
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RECONCILEMENT ITEM 1 SCHEDULE C

1. Funds received from Agency Account of Thomas McDonough, Deceased 72,848.89

LESS:

Amount due Estate of Peter McDonough, Dec'd.	33,714.37	
Dividend accrued on 2500 shs. Standard Oil Co. of California, Common Stk. (See Schedule I)(B)	2,500.00	
Unashed Dividend checks (See Schedule F)		
422 Shs. Texas Public Service Co. Common	126.60	
1000 Shs. General Motors Corp. Com.	1000.00	1,126.60
Previously taxed property as follows: (See Schedule I)		
1/2 proceeds of sale 5 shs. Mission Corp.	133.14	
1/2 proceeds of sale 220 shs. Barnsdall Oil Co. Common Stock	4566.29	
1/2 proceeds of sale 100 shs. Consolidated Natural Gas Co. Common Stock	2368.65	
1/2 proceeds of sale 125 shs. Middle States Petroleum Corp. Class B. Stock	448.39	
1/2 of 30% Liquidating Div. on 8000 International Hydro-Electric System Conv. 6% Gold Deb.	1200.00	8,715.47
Due 4-1-44		48,066.44

48,066.44

26,792.45

LESS:

Principal payment on note of Frank Lynch received 9-22-48 and transferred from agency account.	45.45	
		<u>26,747.03</u>

ADD:

Bank of America Agency Fee for period 7-22-48 to 9-13-48 deducted on 9-29-48 (See Schedule I)	178.66	
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TOTAL CASH RETURNABLE SCHEDULE C 26,920.69

2. Commercial Account of decedent at Clay Montgomery Branch Bank of America N.Y. & S.A., San Francisco, Calif. 1,012.11

PROMISSORY NOTES

3. Promissory note for \$1,500.00 dated Oct. 20, 1947, executed in favor of decedent by Frank Lynch, providing for monthly payments of \$60.00 including interest at 8%. Balance due as of date of death \$1,099.61 with interest paid to July 20, 1948.

Secured by Mortgage of Chattels dated Oct. 20, 1947, recorded Nov. 10, 1947 in Book 4713 of Official Records at page 309 in the office of the Recorder of the City and County of San Francisco, State of California.

Principal	1,099.61	
Interest	8.25	1,107.86

TOTAL 29,040.66

Endorsed : Filed December 21, 1984.

[Title of District Court and Cause.]

OPINION

Hamlin, District Judge.

This is a suit to recover taxes paid in the Estate of Thomas McDonough, on the ground that the deduction allowed by the Commissioner for property previously taxed was too small. The property which is the subject of the dispute here was owned in joint tenancy by Thomas McDonough and his brother, Peter McDonough. When Peter McDonough died on July 8, 1947, his one-half interest in the joint tenancy property vested in Thomas by operation of law. Thomas McDonough died on September 13, 1948, before the administration was completed in the Estate of Peter McDonough, and the estate taxes in Peter's estate were paid out of assets in Thomas' estate.

The original return filed by the Estate of Thomas McDonough showed that the total gross value of this one-half interest that passed from Peter to Thomas was some \$585,000, and that about \$141,000 of the estate taxes in Peter's estate were attributable to this property. In the original return, this property was both included in the gross estate and deducted as property previously taxed at the value of about \$444,000. The Commissioner redetermined the tax and allowed a deduction of only \$373,894.78, which is the value of all of Peter's gross estate less all the estate taxes, state inheritance taxes, deductions, legacies and claims made in the Estate of Peter

McDonough. On the basis of this redetermination, the Commissioner assessed a deficiency of \$9,570.95 in taxes and interest, which was paid by the taxpayer. The plaintiff then filed a claim for refund which was rejected on March 3, 1953.

The statute applicable to the deduction in question provides as follows:

“For the purpose of the tax the value of the net estate shall be determined * * * by deducting from the value of the gross estate——

* * * (c) Property previously taxed—An amount equal to the value of any property (1) forming a part of the gross estate * * * of any person who died within five years prior to the death of the decedent, * * * where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise or inheritance * * *. This deduction shall only be allowed * * * in the amount finally determined as the value of such property in determining the value of * * * the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate * * *.” (26 U.S.C.A. 812[c].)

The question presented is whether, for the purposes of the deduction, the correct value of the property which can be identified as having been received by Thomas from Peter is the gross value of that property, or its gross value less its share of Peter's estate taxes, or its gross value less all of the taxes, charges and claims in Peter's estate. The

taxpayer vigorously contends that since all of the specific items which constituted this property at Peter's death were on hand and intact in Thomas' estate, the deduction should be allowed in the total gross value of this property.

Counsel have cited the following cases dealing with this question: *Bahr vs. Commissioner*, 5 Cir., 119 F. 2d 371, cert. den. 314 U. S. 650; *Commissioner vs. Garland*, 1 Cir., 136 F. 2d 82; *Central Hanover Bank & Trust Co. vs. Commissioner*, 2 Cir., 159 F. 2d 167, cert. den. 331 U. S. 836; *Thomas vs. Earnest*, 5 Cir., 161 F. 2d 845; *Bloedorn vs. United States*, Ct. Cl., 116 F. Supp. 133; *Estate of Roswell G. Ackley, et al., vs. Commissioner*, 23 T.C. No. 84. Counsel on both sides have pointed out that none of these cases dealt with the precise situation which we have here—an interest in joint tenancy property which came to the second decedent by operation of law at the death of the first decedent where the estate taxes and other charges of the first estate were not paid until after the death of the second decedent. These cases express conflicting views as to the correct method of valuing the deduction. The *Bahr*, *Central Hanover*, *Bloedorn* and *Ackley* cases, however, appear to be the better reasoned cases, and for that reason this Court prefers to follow the rule generally laid down in those cases. It would seem that the value of property received from a decedent could never be greater than the value of his property less all of the taxes, legacies, claims and charges outstanding against it. The holders of those claims can always proceed against the property to

satisfy their claims, and to that extent they have an interest in the property which cannot be received by anyone else from the decedent. The value of such property received by an heir is only the net value after all the claims against the property have been subtracted. See Rudick, *The Estate Tax Deduction for Property Previously Taxed*, 53 Col. L. R. 761, 762-767.

The plaintiff maintains that if the Commissioner is upheld, double taxation of the property represented by the gross value of some \$585,000 will result. Since this property was included in the gross estate of Thomas at a value of about \$444,000 by both the taxpayer and the Commissioner, we are unable to agree with the plaintiff.

For these reasons, the Court is of the opinion that the redetermination made by the Commissioner allowing a deduction of \$373,894.78 was correct and should be upheld.

Judgment will be entered accordingly, defendant to prepare findings of fact and conclusions of law.

Dated: May 10, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed May 10, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial on November 24, 1954, before the Court sitting without a jury, Honorable O. D. Hamlin, United States District Judge, presiding. J. W. Radil, Esq., appeared for plaintiff, and Lloyd H. Burke, Esq., United States Attorney, by George A. Blackstone, Esq., Assistant United States Attorney, appeared for defendant. A pretrial order having been filed on November 10, 1954, and documentary evidence having been introduced and the cause submitted for decision upon briefs, the Court now makes its findings of fact as follows:

Findings of Fact

1. The above-entitled action was brought by plaintiff to recover a federal estate tax in the sum of \$40,249.05, with interest thereon from date of payment. The Court has jurisdiction of this action under 28 U.S.C. § 1346 (a) (1).

2. The allegations of paragraphs 1, 2, 3, 4, 6, and 8 of the complaint are true. The allegations of paragraph 5 of the complaint are true except that the correct date of payment by plaintiff of the tax deficiency in the estate of Thomas McDonough is January 3, 1952.

3. Plaintiff filed with the Collector of Internal Revenue at San Francisco, California, on April 21,

1952, a claim for refund of estate tax in the form annexed to the complaint as Exhibit A. The claim for refund was disallowed on March 3, 1953.

4. Peter P. McDonough died on July 8, 1947, leaving a gross estate valued for estate tax purposes at \$638,673.66. Of this gross estate the valuation for estate purposes of property held in joint tenancy by Peter P. McDonough and his brother, Thomas McDonough, was \$577,971.92. The allowable amount of deductions from the gross estate of Peter P. McDonough for estate tax purposes was \$27,093.53. The total federal estate tax assessed against the estate of Peter P. McDonough was \$149,289.84. The state inheritance taxes attributable to the estate of Peter P. McDonough were \$49,263.81. The net specific legacies from the estate of Peter P. McDonough to others than Thomas McDonough were \$39,116.47. The net value of the said jointly-owned property to which Thomas McDonough succeeded by virtue of the death of Peter P. McDonough was \$373,910.01, computed by deducting from the gross estate of Peter P. McDonough the specific legacies, the federal estate taxes, the state inheritance taxes and the deductions in the amounts set forth above.

5. Thomas McDonough died on September 13, 1948. At the date of his death the administration of the estate of Peter P. McDonough (hereinafter called "the prior estate") had not been completed. On that date all of the jointly-owned property included in the prior estate was identifiable in the

estate of Thomas McDonough, except for one item of jointly-owned property included in the prior estate at a value of \$23.30. The net value of this item of jointly-owned property to which Thomas McDonough succeeded by virtue of the death of Peter P. McDonough was \$15.23 after adjusting for the pro rata deductions and taxes attributable thereto. This left a net adjusted value of the interest of Thomas McDonough in the jointly-owned property included in the prior estate and included in Thomas McDonough's estate to which interest Thomas McDonough succeeded on Peter P. McDonough's death of \$373,894.78.

6. Although on the date of death of Thomas McDonough all of the jointly-owned property included in the prior estate, except the aforesaid item of property valued at \$23.30, was identifiable in the estate of Thomas McDonough, such property was subject to the lien of unpaid federal estate taxes of the prior estate attributable to such jointly-owned property in the sum of \$141,592.71. On October 8, 1948, plaintiff as Executor of the Estate of Thomas McDonough paid to the Collector of Internal Revenue at San Francisco, California, the sum of \$141,-686.05 for and on account of such federal estate taxes assessed against the estate of Peter P. McDonough. The overpayment of \$93.34 is not in issue in this case.

7. In the estate tax return filed on behalf of Thomas McDonough the identifiable property previously held in joint tenancy with Peter P. Mc-

Donough was included in the gross estate of Thomas McDonough at an amount equal to the value of that property at the date of his death less said sum of \$141,686.05 paid by plaintiff, as set forth in paragraph 6 above. The net amount so included in the gross estate of Thomas McDonough was \$444,033.18.

Conclusions of Law

1. The Commissioner properly determined in accordance with law the deduction for property previously taxed in computing the estate tax liability of the estate of Thomas McDonough.

2. Defendant is entitled to judgment herein that plaintiff recover nothing and dismissing the complaint with costs to defendant.

Dated: June 16, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Lodged June 6, 1955.

[Endorsed]: Filed June 17, 1955.

In the United States District Court for the Northern
District of California, Southern Division

No. 32762—Civil

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, a National Bank-
ing Corporation, as Executor of the Last Will
and Testament of THOMAS McDONOUGH,
Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above-entitled action came on regularly for trial on November 24, 1954, before the Court sitting without a jury, Honorable O. D. Hamlin, United States District Judge, presiding. J. W. Radil, Esq., appeared for plaintiff, and Lloyd H. Burke, Esq., United States Attorney, by George A. Blackstone, Esq., Assistant United States Attorney, appeared for defendant. A pretrial order having been filed on November 10, 1954, and documentary evidence having been introduced and the cause submitted for decision upon briefs, and the Court having made its findings of fact and conclusions of law,

Now Therefore, by reason of the law and the evidence and the findings of fact and conclusions of law aforesaid, it is Hereby Ordered, Adjudged and Decreed that plaintiff's complaint and cause of action therein be and the same is dismissed with costs to the defendant in the sum of \$41.76.

Dated: June 16, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Affidavit of Service by mail attached.

Lodged June 6, 1955.

[Endorsed]: Filed June 17, 1955.

Entered June 20, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Notice Is Hereby Given that Bank of America National Trust and Savings Association, a National Banking Corporation, as Executor of the Last Will and Testament of Thomas McDonough, Deceased, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 20, 1955.

Dated: August 15, 1955.

/s/ J. W. RADIL.

/s/ F. J. KILMARTIN,

KNIGHT, BOLAND &
RIORDAN,

Attorneys for Appellant.

[Endorsed]: Filed August 15, 1955.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That we, Bank of America, N.T. & S.A., a National Banking Corporation, as Executor of the Last Will and Testament of Thomas McDonough, deceased, Appellant, as principal, and United States Fidelity and Guaranty Company, a corporation duly incorporated under the laws of the State of Maryland, of Baltimore, Maryland, having an office and usual place of business at 444 California Street, San Francisco, California, as Surety, are held and firmly bound unto United States of America in the sum of Two Hundred and Fifty and no/100 Dollars (\$250.00), lawful money of the United States of America, to be paid to the said United States of America heirs, executors, administrators, successors or assigns, for which payment well and truly to be made and done we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 15th day of August, 1955.

Whereas, the aforesaid Principal is filing notice of appeal to the Court of Appeals of the United States for the Ninth Circuit from the judgment of the District Court of the United States for the Southern Division of the Northern Judicial District of California in the said suit or proceeding.

Now the Condition of This Obligation Is Such, That if the said Appellant shall pay the costs if the appeal is dismissed or the judgment is affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obligation to be void: otherwise to remain in full force and virtue.

Bank of America, National Trust & Savings Association, a National Banking Corporation, as Executor of the Last Will and Testament of Thomas McDonough, Deceased.

[Seal] By /s/ BURTON L. WALSH,
Its Attorney.

[Seal] UNITED STATES FIDELITY
AND GUARANTY COMPANY,

By /s/ JAMES L. STUDABAKER,
Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On August 15, 1955, before me, Doris C. Bortoli, a Notary Public in and for the City and County of San Francisco, personally appeared James L. Studabaker, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that he subscribed the name of the United States Fidelity and

Guaranty Company thereto as principal and his own name as Attorney-in-fact.

[Seal] /s/ DORIS C. BORTOLI,
Notary Public in and for the City and County of
San Francisco.

My Commission Expires December 7, 1958.

[Endorsed]: Filed August 15, 1955.

The United States District Court, Northern District
of California, Southern Division

No. 32762

BANK OF AMERICA,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Before: Hon. Oliver D. Hamlin, Judge.

REPORTER'S TRANSCRIPT

Appearances:

For Plaintiff:

J. W. RADIL, ESQ.

For the Government:

LLOYD H. BURKE,

United States Attorney, by
GEORGE A. BLACKSTONE,
Assistant U. S. Attorney.

Wednesday, November 24, 1954

The Clerk: Bank of America, as Executor of Thomas McDonough, versus United States, for trial.

Will respective counsel please state their appearances for the record?

Mr. Radil: J. W. Radil, of Knight, Boland and Riordan, representing the Bank of America.

Mr. Blackstone: George A. Blackstone, Assistant United States Attorney, representing the defendant United States of America.

The Court: I would like the record to show, prior to coming into Court, that I have called the attention of counsel to the fact that I am stockholder of the Bank of America National Trust and Savings Association, and to indicate whether counsel desired or felt that that was a disqualification and desired to waive any such disqualification. I would like to hear from counsel.

Mr. Blackstone: On behalf of the United States, I waive any disqualification arising from Judge Hamlin's ownership of stock in the Bank of America.

Mr. Radil: And on behalf of the plaintiff, I also waive any such disqualification.

The Court: All right.

Mr. Radil: The trial in this case, your Honor, will be [2*] relatively short and simple. If your Honor will refer to the pre-trial order, which is on file here, it is supposed to have attached to it certain exhibits, four exhibits, and in order to shorten

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

this record, we do not desire to reoffer the same exhibits all over again, but we will offer them right now as they are attached to the pre-trial order, and we now offer them in evidence.

The Court: There are four such exhibits, are there?

Mr. Radil: Yes, your Honor.

The Court: They may be admitted in evidence and take the same numbers as they appear to have upon the pre-trial order.

Mr. Radil: There were a couple of corrections you wanted to call to the Court's attention?

Mr. Blackstone: Yes, your Honor. In order that there may be no confusion, there are a couple of typographical errors or corrections that should be made in these exhibits. Referring first to Exhibit 3, which is the Estate Tax Return of Thomas McDonough, if your Honor will then refer to Schedule I of that exhibit——

The Court: Schedule I? Yes?

Mr. Blackstone: There are two attached sheets to that, and it is the underlying sheet. You will notice that at the bottom, where there is the first line drawn, there appears to be written in in pencil the figure 7515.47. That is just—it [3] shouldn't be there. It is not part of the actual exhibit and we ask that it be stricken off of the exhibit.

The Court: I will draw a line through it.

Mr. Blackstone: Draw a line through it, your Honor, so there won't be any confusion, that that is included in the actual schedule.

The other typographical error is in Exhibit 4, which is the final audit in the Estate of Thomas McDonough. If you will refer to the third page, which actually is entitled, "Schedule No. 2 of the Explanation of Adjustments"—

The Court: Very well. Yes?

Mr. Blackstone: Coming down to the fifth line, which says, "Column A——"

The Court: Yes?

Mr. Blackstone: The last column reads "\$184,094.23." That is a typographical error; it should be, "\$584,094.23."

The Court: Five eighty-four?

Mr. Blackstone: Just an error in typing. In other words, it should be the same figure as is contained in the first column, your Honor.

The Court: I will change that one to a five.

Mr. Blackstone: Otherwise, I believe that the figures are accurate all the way through these exhibits, so far as figures go.

Mr. Radil: Now, that, your Honor, is all the evidence [4] that the plaintiff has to offer, because the rest of it is admitted by the pleadings and determined by the pre-trial order. It is true that there are a great many allegations in my complaint, for the purpose of drafting this complaint—I should say, the purpose of drafting the complaint was to set forth in chronological order in some intelligible fashion what our contentions were, and we therefore have alleged in the complaint several facts which are argumentative in nature and we have also set forth in there what the law provisions are, of

the statute, just so as to make clear what our position was.

There's only one fact we call attention to that we are not proving, and that is on Page 4, Line 9.

The Court: Of what?

Mr. Radil: Of the complaint.

The Court: Yes?

Mr. Radil: We allege in Lines 20 and 21, and also 22, that the plaintiff did pay on October the 8th, 1948, to said Collector out of the assets of the said Estate of Thomas McDonough, other than said jointly owned property, the sum of \$141,686.05. We are not going to prove that, because it is very difficult to do it from the bank records, and at the time I drew this complaint up, I thought it might be of some moment, but subsequently I have decided that it's immaterial for this reason, that all these taxes obviously are fixed at the time of death, and no action by any party after the decedent [5] has died could alter in any way the legal incidence of the tax or the tax relations and obligations of the taxpayers and the Government; therefore I do not feel that that is a material obligation, and I am dropping it from the proof.

The Court: Well, the part that you are not proving is that it was paid out of the assets of the estate of Thomas McDonough, other than the jointly owned property?

Mr. Radil: That's right.

The Court: The figure of one forty-one, you still declare that you did pay?

Mr. Radil: That is covered in the pre-trial order and so on.

The Court: All right.

Mr. Radil: Now with that, as far as I am concerned, I would be willing to rest the case, and counsel for the Government tells me he has no further evidence.

Now I have this suggestion to make. This action, your Honor, concerns the deduction of previously taxes property in the estate of a second decedent. It is a subject which has been litigated around the country in different courts, district courts, tax courts and in certain circuit courts, but not in this Circuit. And those decisions have been diverse. There is a problem which has been before the Government and the taxpayers for a great many years, and I will freely concede today that the numerical weight of the authority is against me [6] in the Circuit Courts of Appeal. Nevertheless, we feel that our position in this matter is strictly in accordance with the statute, and that we should therefore prevail in this action, regardless of what some other circuit court may have decided. And so the case, therefore, will have to really be briefed on the law.

I thought this morning, we might, if your Honor so desires, go into the facts of the case so that your Honor will have a clear understanding of the facts, and then we wouldn't have to argue the facts of the case, because they are all agreed to anyhow, and it might occur to your Honor that he might like some enlightenment on some certain facts in the case, so I thought we might proceed with a statement of

those facts and then if your Honor desired to ask some questions about it, I am sure both counsel and I would be happy to state our views.

The Court: I am very glad to have that. In the brief time I had before ten o'clock, I got so far in your complaint and the pre-trial order, got certain understanding, but I got lost just before the end and I didn't have time to get your contention. Is it that in the payment of \$141,000 by the Estate of Thomas McDonough, upon the obligation of the estate tax of Peter McDonough, that your contention is that that \$141,000 should be allowed as a deduction, as a debit, and the Government's contention is that it should not be? Is that the [7] point?

Mr. Radil: Well, no, not exactly, your Honor. We will have to start off with it, if I refer to the statute here, it is just so that your Honor will understand the contentions. Not that I am going to argue the law of the case. But this comes under Section 812(c) of the Estate Tax Law, that is the Revenue Code citation. And that Section provides:

“(c) Property previously taxed.”

And it says—First of all, the Section provides,

“812. Net Estate. For the purpose of tax the value of the net estate shall be determined in the case of a citizen or resident of the United States by deducting from the value of the gross estate * * *”

and then follows a list of deductions (a), (b), and then we come to (c), and (c) is all we are concerned

with in this case, and under that (c), it's entitled, "Property Previously Taxed," and it says in effect:

"It shall be deducted, an amount equal to the value of any property, one, forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of decedent * * *"

The next two we are not concerned with. Then it says, we skip the next wording, and then we come down to that portion where it says:

"This deduction shall only be allowed— [8] shall be allowed only where a gift tax imposed under Chapter 4 or under Title III of the Revenue Act of 1932, 47 Statutes 245, or an estate tax imposed under this chapter or any prior act of Congress was finally determined and paid by or on behalf of such donor or the estate of such prior decedent."

Incidentally, we have no gift or donor here, we are just dealing with estates. And then it goes on:

"* * * as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if, in determining the value of the net estate of the prior decedent, no deduction was allowed under this subsection, Section 861 (a) 2 * * *"

and so on, We are not concerned with that last.

So therefore, what is the amount which constitutes the value of any property forming a part of the gross estate of the prior decedent? Now this case is a little different from any of the previously decided cases, because of the fact that here we have a joint tenancy. You see, this property in the second estate was not in the first estate at all, was not subject to probate. Therefore, it was always in the possession [9] of the second decedent, and he had it and maintained it without diminution at the time of his death, and the exact assets, according to the admitted facts, that were the subject of the joint tenancy that was taxed in the Estate of Peter McDonough was still in existence in Thomas' hands at his death and had not been diminished by any reason whatsoever. It was exactly accounted for, and the reason it was in that condition was that it was in the hands of the Bank of America as a fiscal agent for Thomas McDonough, and they had all the assets right there at the time when Thomas McDonough died. So that that's the reason why it was kept so carefully intact—not advisorily, it just so happened.

And so at the time when Thomas McDonough died, the Federal Estate Tax in the Estate of Peter McDonough had not yet been determined and it had not yet been paid. So it was only afterwards that the Bank of America itself, acting as Executor of the Estate of Thomas McDonough, paid the Federal Estate Tax in the Estate of Peter McDonough, upon that portion of the estate of Peter McDonough which constituted the joint tenancy property.

Now it so happened that the joint tenancy property constituted practically all of the Estate of Peter McDonough, and that there was very little left in the Estate of Peter McDonough for actual probate.

The Court: Was there a difference of some six, seven, [10] eight thousand dollars in taxes between the two?

Mr. Radil: Yes, that's right, there was a difference.

The Court: One forty-one and one forty-eight?

Mr. Radil: The total tax was one forty-nine, your Honor, and of that tax, the estate of Thomas McDonough on behalf of the joint tenancy paid \$141,000. So the rest of it was paid out of assets other than the joint-tenancy property.

So now we come to the point where the Government starts in to compute the amount of the previously taxed property, and I will not refer to the regulations on it, because they are somewhat complex, and these regulations, I contend, are null and void because they purport to set forth deductions that are not specified in the statute, and I contend that the measure of the previously taxed property is exactly what it states in the statute, and that is the bone of contention upon which the courts have split. In other words, when the statute says that there shall be deducted an amount equal to the value of any property forming a part of the gross estate of the prior decedent, it also says, "Where such property can be identified as having been re-

ceived by the decedent from the prior estate * * *," you see, so that there is an identification of the property there.

Now my contention is that when you identify property—we are all familiar with the rule of trust law, of identifying assets. We know that in trusts, for example, you have to [11] identify assets. When the law here says that you have to identify this property, that's exactly what it means. You have to have the specific assets there, the stocks, the bonds, the real estate, and if it is cash, then you have to prove that this cash was set aside and not commingled with other cash, and therefore you have to identify it.

Now having identified the property, and if the property so happens to be intact at the death of the second decedent, then it is my contention that under the statute there is no occasion for indulging in accounting details, so as to set up a purely theoretical previously taxed property. My contention being that if the property is identified and it's there under the statute, that is the thing that you are entitled to have deducted from the second estate, and the reason for it is obvious—that in passing the law, that the property should only be taxed once in five years, that was the very meaning of it, that it should be taxed only once in five years. The same property. Not that same property less this, less that, less something else, but the identical property, if it has been taxed once and a full tax having been paid on previously taxed property, which it is admitted here it was, then it shouldn't be taxed

again in the second estate. The entire property should pass into that second estate free from tax, and therefore the question as to the deduction of the tax that was paid, \$141,000, that was paid upon the joint [12] property in the first estate, should not be deducted from the half a million dollars of the property that was in the joint tenancy of the first estate, thus reducing your previously taxed property from \$500,000 to \$500,000 less \$141,000. And that's the bone of contention here upon which the Government and ourselves split, because the Government contends by an accounting theory that in truth and in fact, what the taxpayer in the second estate received from the joint tenancy in the first estate was not the whole property, but the property less the amount of the tax. That is their contention. That has been a contention in some of these other cases.

Our contention, on the contrary, also supported by a few other cases in the circuit courts, is that the property that was previously taxed is the entire property, not the entire property less the amount of the tax, and that theory goes on, runs through the cases, and various reasons are given by the circuit courts and lower courts for indulging in accounting propositions instead of being strictly regulated by the statute as to the identifiable property in gross.

Now with that statement, your Honor, if there are any questions here about the facts of the case or the accounts, I would be glad to answer them.

The Court: Well, suppose I hear from Mr.

Blackstone, and then I may have some [13] questions.

Mr. Radil: Yes.

Mr. Blackstone: May it please the Court, I believe Mr. Radil has stated the basic conflict of position in this field. The argument of the Government in this case, as in all the others that have arisen, is that the property previously taxed, the deduction, is really to be limited to the net value of the property passing to the second decedent from the first decedent. In the ordinary case, let us take the ordinary situation, or a typical situation of an estate worth \$500,000. The first decedent dies, leaving an estate of \$500,000, on which there is an estate tax payable, let us say, of \$100,000. He leaves all of this property, let us say, to B. The estate is administered, the tax is paid out of the estate. That leaves \$400,000 to go to the second decedent, to B. B dies within five years. He retains intact his \$400,000, which he got net out of the other estate. His deduction, in his estate when he dies, will necessarily then be limited to the \$400,000, the net value of the property coming to him from A's estate, the first decedent estate.

Now look at the situation where the first estate is not completely administered at the time of death of B. Let us take the situation, the same facts, \$500,000 of property in A's estate. An estate tax is payable of \$100,000. It has not yet been paid by the administrator of A's estate. The \$500,000 in identifiable property is in existence. It goes to [14] B. B has—the estate tax has not been paid. B dies. Then B claims, his estate claims that they

are entitled to a property previously taxed deduction of the whole \$500,000, ignoring completely that there is lien on that property for the Federal Estate Tax in A's estate of \$100,000.

The argument of the Government is, the situation should not be different because in one case, before the death of the second decedent, the estate has been completely administered and the taxes paid, whereas, in the second case, by fortuitous circumstance, the estate tax in the first estate had not been paid. In either event, the second decedent, the beneficiary of the first estate, gets only the net value of the property. He doesn't really have this \$500,000, because there is the lien of federal taxes on it, and it should not matter whether that tax has been paid before he dies or is paid afterwards. And as far as the Government is concerned, that's all this case amounts to.

The mere fact that Thomas McDonough died before the Bank of America had had a chance to pay the tax on Peter's estate, shouldn't result in a different estate tax situation. The property previously taxed deduction should be computed as if the estate tax and inheritance taxes had been paid in advance prior to death. The regulation requires that, the regulation requires that the estate tax on the first estate should be paid if you are to get any tax at all, and, in fact, the statute [15] appears to read that way.

Now if we are going to have a literal interpretation of the statute, it could be argued here that

they are not entitled to any property prior tax, previously taxed property deduction. But a literal interpretation of that, to that extent, would not actually be in accordance with what Congress intended, and neither would the kind of literal interpretation that the plaintiff is contending for here.

The cases, as Mr. Radil says, do split on this subject, but we believe the better reasoned ones are those supporting the Government's point of view.

The Court: Well, then, the point here is, this \$141,000 which was paid by the Thomas McDonough estate for the taxes of Peter McDonough's estate, as to whether in computing the amount of the previously taxed property, that \$141,000 should or should not be included?

Mr. Blackstone: That's correct.

The Court: Is that right?

Mr. Blackstone: We maintain that as the return itself showed, it deducted that amount from the amount of property previously taxed, and that that was the correct way to handle it, and the tax, the amount of deduction should be computed accordingly. Is that correct, Mr. Radil? I mean, do you agree that that's the issue there?

Mr. Radil: Yes. I believe that is correct, your Honor. [16]

However, there is one thing, the thing gets a little complicated when you come down to computing certain other items in this estate of the tax. For example, my contention is also that the gross estate of Thomas McDonough obviously included all of his property of every kind and character, which

necessarily included that portion which he already had in his possession at the time of Peter's death under the joint tenancy. In other words, there was a million dollars worth of joint tenancy property when Peter died.

Now when Thomas died, it so happened that that same million dollars of joint tenancy property was still in existence. It hadn't been dissipated, it hadn't been spent. And therefore the gross estate of Peter McDonough must obviously include all property of every kind and character that he left. It is so specified in the Revenue Act, in the Code, and it didn't mean the amount of the property, \$585,000 less \$141,000.

In other words, \$141,000 hadn't been paid. There was actually in existence the whole \$1,000,000 of that previously jointly-owned property, and not only a half of it, and a half somewhere else less. It was \$141,000 of tax which the Government claims. And in that respect the Form 706, which Exhibits 1 and 3, here—there are two forms 706—the forms prescribed by the Government, and they have a schedule in there entitled “Schedule E, Jointly-Owned Property.” And there [17] isn't any provision in that schedule for the deduction of the tax upon the jointly-owned property or upon the previously taxed property, so that while we can follow the Form, nevertheless, my contention is that the gross estate of Thomas McDonough included 100 per cent of the jointly-owned property.

Now it is true, as Mr. Blackstone, that the estate of Thomas McDonough under the law owed a

Federal estate tax of \$141,000. However, your Honor will recollect that under the set-up of the Federal estate tax, the executor is primarily liable for the tax, the executor in the estate of Peter McDonough is primarily liable for the tax. Then the law provides that in the event of some jointly-owned property that doesn't come into the executor's possession, where there is a Federal estate tax, that the executor has a right to recover the amount of the tax upon their jointly-owned property from the party who received the jointly-owned property, outside of the estate. So that there was an obligation upon the part of the estate of Thomas McDonough, as Mr. Blackstone stated, to pay this \$141,000, and the Bank of America as executor of Thomas' estate did so pay it.

So that the net result was that they have still had the property at the time of death, and the fact that Mr. Blackstone lays some emphasis upon the fact that the previous estate had not yet been fully administered, that's only a coincidence, you might say, and you don't hang your [18] hat on that, because we boldly take the position that in any case, whether it had been administered or not, if it so happens in that second estate that you find the entire jointly-owned property, or whatever it was, the previously taxed property, intact in the possession of the second taker, that that is the amount that he is entitled to deduct from the gross estate of the second taker. And not that less the tax. Because the first estate already paid the tax on the whole \$585,000. They didn't pay a tax on \$585,000 less \$141,000. They paid the tax on the whole

\$585,000. And since the very purpose of the statute is to prevent the same piece of property from being taxed twice, therefore you are entitled to a whole deduction of \$585,000 if you still have it when the second taker dies, or the second estate dies.

Now it can be argued, well, in one case the man might have it and in the other case he might not, when the second taker dies. That's true. But what of it? That doesn't prove anything, because, for example, the second taker might have been a spend-thrift and he might have spent all the property he got from the first estate. Therefore when he died, there wouldn't be any deduction for previously taxed property, because it cannot be identified. It's gone. And so some of the cases, for example, will say, well, that leaves it within the discretion of the taxpayer in the second estate whether his estate is going to be taxed on the whole value of [19] the property or only on part of it. And my answer to that is, well, that's always the case, that when the second taker received the property from the first estate, if he wanted to spend it, dissipate it, exchange it or lose it in some speculation, then it wouldn't be in existence. So that was in his power, too.

And so that argument I consider to have no validity at all, because the Congress certainly didn't intend to go into the question of whether a man did—or what he did with the property. That was immaterial whether he had it or whether he didn't have it, and why he had it and why he didn't

have it, or his motives, whether he was rich or poor, whether he could afford to pay the tax in the first estate or couldn't afford to pay it. That's immaterial. The point is, was the property there when the second man died? And if it was, then our contention is, under the strict wording of the statute, that the entire amount of that property should be deducted and not only a part of it.

Mr. Blackstone: Well, I just have one other word on this, your Honor. I do not understand whether Mr. Radil is making an argument now about increasing the gross value of this estate. The Government does object to that being brought into this case is an issue on the ground that it is a variance from the refund claim, that the refund claimed simply raises the issue as to how do you compute the property previously [20] taxed. We do not agree, the Government does not agree that the estate tax owing in the estate of Peter, the first decedent, constitutes a claim against the second estate, a deductible claim. We say it is simply a lien against that property. And it seems to us that the property that came to Thomas' estate was this \$500,000, subject to a lien, so the net value when you are valuing it—you deduct from it the lien of the estate tax, and that is, of course, the way the plaintiff prepared his return, in just that way, showing the total value, the gross value of the previously taxed property less this lien of the estate tax. And he is now attempting to revise his whole method of reporting this property, and say, well, they made an error, that they should never

have deducted from the value this lien of the estate tax, that they somehow got a greater value from the estate than this net amount of the gross minus the estate tax attributable to it.

The Court: Now, how do you desire to present authorities in this matter?

Mr. Radil: I think, your Honor, that the Government would probably require considerable time on this, and with the holiday season and so on, I would like about 30 days to present authority, and I assume you would like a similiar time?

Mr. Blackstone: Yes, that would be agreeable with us, if your Honor has no objection. [21]

The Court: All right.

Mr. Radil: And I would have 15 days to close?

The Court: Thirty, thirty and fifteen?

Mr. Blackstone: That would be agreeable, your Honor.

The Court: And I notice that at the end of the pre-trial order, No. 6, it states in the event that plaintiff should prevail, the exact amount of the judgment is to be computed by mutual agreement, or in the absence of any, by the Court. In other words, is it your feeling that the way this should be handled at the end, that the Court would indicate whether he felt the plaintiff should or should not prevail and from there on you would figure the tax?

Mr. Blackstone: Yes, your Honor, it may be that.

The Court: Figure the refund, rather?

Mr. Blackstone: It may be that your opinion, if you decide for the plaintiff, will indicate the basis

of your decision, which would give a lead, then, as to how you thought the tax should have been computed, and then it would be, perhaps, a mathematical proposition. If not, it may be that we would have to—if we disagree as to your meaning, or we have some further argument about how this should be computed, that we felt we should have the opportunity to bring in our accounting experts, if need be, and present further evidence and further argument to you. But we didn't think it was necessary at this stage to go into that technical question. [22]

The Court: Well, I don't have a next-year's calendar here. Oh, here, yes. Suppose we carry it on our calendar to the 15th of February. That is a little beyond the thirty, thirty and fifteen for submission at that time. That will give you time to get your briefs in and we will carry it on our calendar for submission at that time.

Mr. Radil: I have one further suggestion, your Honor. It may be, while I am quite familiar with this case because I have lived with it for several years—you get so close to the picture, lots of times you don't see some of the trees. And so your Honor might feel that he might like some further enlightenment on some facts in this case. I think counsel would agree that we could explain such additional facts as you desire.

Mr. Blackstone: Oh, yes, I think so, your Honor.

The Court: All right. If at the time the briefs are in and I have read them, I desire that the

matter be set down for some further oral arguments, we can do it at that time.

Mr. Blackstone: Yes, that's fine.

The Court: All right, it may be continued, then, to February 15th for submission on thirty, thirty and fifteen. The plaintiff will file the first brief.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 23 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ ELDON M. RICH.

[Endorsed]: Filed January 6, 1955. [23]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District, Southern Division, do Hereby Certify That the Foregoing and Accompanying Documents and Exhibits, Listed Below, Are the Originals Filed in This Court in the Above-Entitled Case and That They Constitute

the Record on Appeal Herein as Designated by the Attorneys for the Appellant:

Complaint to Recover Federal Estate Taxes.

Answer by United States Attorney.

Pre-Trial Order.

Stipulation and Order Admitting Into Evidence and Adding Into Certain Pages to Exhibit 3.

Opinion of Judge.

Findings of Facts and Conclusions of Law.

Judgment.

Notice of Appeal.

Bond for Cost on Appeal.

Appellant's Designation of Record on Appeal.

Reporters Transcript, November 24, 1954.

Joint Exhibits 1, 2, 3 and 4.

In Witness Whereof, I have Hereunto Set My Hand and Affixed the Seal of Said District Court, This 21st day of September, 1955.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 14879. United States Court of Appeals for the Ninth Circuit. Bank of America National Trust and Savings Association, as Executor for the Last Will and Testament of Thomas McDonough, deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 21, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14879

BANK OF AMERICA, NATIONAL TRUST
AND SAVINGS ASSOCIATION, a National
Banking Corporation, as Executor of the Last
Will and Testament of Thomas McDonough,
Deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF THE
POINTS ON WHICH IT INTENDS TO
RELY ON THE APPEAL, AND APPEL-
LANT'S DESIGNATION OF THE CON-
TENTS OF THE RECORD ON APPEAL

I.

Statement of the Points on Appeal.

The appellant intends to rely on these points on
appeal:

1. The judgment and decision is against law.
2. The Findings of Fact do not support either
the Conclusions of Law or the Judgment.
3. That portion of Finding 4 reading as follows
is not supported by the evidence, and in fact is
a conclusion of law, and said conclusion of law is
erroneous, to wit:

“The net value of the said jointly-owned property to which Thomas McDonough succeeded by virtue of the death of Peter P. McDonough was \$373,910.01, computed by deducting from the gross estate of Peter P. McDonough the specific legacies, the federal estate taxes, the state inheritance taxes and the deductions in the amounts set forth above.”

4. That portion of Finding 5 reading as follows is not supported by the evidence, and in fact is a conclusion of law, and said conclusion of law is erroneous, to wit:

“This left a net adjusted value of the interest of Thomas McDonough in the jointly-owned property included in the prior estate and included in Thomas McDonough’s estate to which interest Thomas McDonough succeeded on Peter P. McDonough’s death of \$373,894.78.”

5. Failure to find that the amount of property previously taxed within five years received by Thomas McDonough from Peter P. McDonough, which was entitled to be deducted from the gross estate for Federal Estate Tax purposes in the Estate of Thomas McDonough, was the sum of \$577,971.92.

6. Failure to find that in computing the Federal Estate Tax due from the Estate of Thomas McDonough, said estate was entitled either to have the full amount of said jointly-owned property included in the gross estate of said Thomas McDonough with a credit for the amount of the

Federal Estate Tax of \$141,592.71 due and unpaid in the Estate of Peter P. McDonough, with a deduction of said previously taxed property amounting to \$577,971.92; or, in the alternative, to have the gross estate of Thomas McDonough reduced by the said tax of \$141,592.71, and still be entitled to a deduction of \$577,971.92 for the property previously taxed in the Estate of Peter P. McDonough.

7. Failure to find that notwithstanding the form in which the gross estate for Federal Estate Tax purposes was set forth in the estate tax return in the Estate of Thomas McDonough, plaintiff nevertheless was entitled in computing the deduction for property previously taxed in the Estate of Peter P. McDonough to have such computation made in accordance with the Federal Estate Tax provisions, i.e., the applicable law at the full amount of \$577,971.92.

8. That said judgment is against law in that it did not compute the jointly-owned property previously taxed in the Estate of Peter P. McDonough at the full value of \$577,971.92.

9. That said judgment is against law in that it holds that the Federal Estate Tax of \$141,592.71 paid by the Estate of Thomas McDonough upon the joint property left by Peter P. McDonough and due in said Estate of Peter P. McDonough, had to be deducted from said jointly-owned property of \$577,971.92 in computing the deduction in the Estate

of Thomas McDonough for property previously taxed.

10. That said judgment is against law in that it reduced the deduction for property previously taxed in the Estate of Peter P. McDonough by the items set forth in Finding 4.

II.

Designation of Contents of Record on Appeal.

The appellant designates for inclusion the complete record and all the proceedings and evidence in the action to be contained in the Record on Appeal, including the Reporter's Transcript of the evidence or proceedings, and this Designation of Contents of Record on Appeal.

Dated: September 23rd, 1955.

/s/ J. W. RADIL,

/s/ F. J. KILMARTIN,

KNIGHT, BOLAND & RIOR-
DAN,

Attorneys for Appellant.

Receipt of Copy Acknowledged.

[Endorsed]: Filed September 23, 1955.